



An
Bord
Pleanála

Inspector's Report ABP-303062-18

Type of Appeal	Section 9 Appeal against entry of land on the Register of Vacant Sites
Location	Ballymany, Newbridge, Co Kildare.
Planning Authority	Kildare County Council.
Planning Authority VSL Reg. Ref.	VS001.
Appellant	Glan Develoments Ltd.
Planning Authority Decision	Place on Register.
Date of Site Visit	21 st August 2019.
Inspector	Stephen J. O'Sullivan

1.0 Introduction

1.1. This appeal is against the entry of a site at Ballymany, Newbridge, County Kildare on to the Vacant Sites Register (VSR) by the council in accordance with the provisions of the Urban Regeneration and Housing (URH) Act 2015.

2.0 Site Location and Description

2.1. The site is on the edge of the built up area of Newbridge c2km south-west of its town centre. It has an area of c5.25ha. It is largely under pasture, but it also includes the curtilage of a detached house which is accessed by a laneway from the R445 regional road beside a petrol station. The south-western boundary of the site adjoins other fields which themselves abut the M7 motorway. Its north-eastern boundary adjoins suburban housing estates. .

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015

3.1.1. Section 5(1)(a) of the act provides criteria to define a vacant site for residential land which refer to –

- Situation in an area in which there is a need for housing
- Suitability for the provision of housing
- Whether the site or a majority of it is vacant or idle

3.1.2. The last criterion was amended to include sites, or a majority thereof, being used for a purpose that does not consist solely or primarily of housing or development for such houses by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced on 19 July 2018.

3.1.3. Section 6(5)(b) of the act provides that a determination as to whether a site is suitable for housing shall refer *inter alia* to whether the site was served by public infrastructure and facilities necessary to enable housing to be provided and serviced.

3.2. Development Plan Policy

3.2.1. Kildare County Development Plan 2017-2023

3.2.2. The Kildare County Development Plan 2017-2023 is the operative County Development Plan wherein Newbridge is designated as a Large Growth Town II.

3.2.3. Section 5.7 Regeneration

The Urban Regeneration and Housing Act 2015 aims to incentivise urban regeneration and facilitate increased activity in the housing construction sector. Under the Urban Regeneration and Housing Act 2015, the Planning Authority is required to identify vacant sites that fall within the definition set by the Act, maintain a register of vacant sites and apply a levy in respect of such sites. The sustainable development of vacant sites in Kildare will be promoted through the targeted application of the Urban Regeneration and Housing Act, 2015 (Vacant Site Levy) in towns that are the subject of a statutory Local Area Plan.

In order to enhance the appearance and socio economic performance of the towns, villages and settlements in the county, Kildare County Council will proactively engage with the members of each Municipal District in devising and delivering plans and projects for regeneration. Urban Renewal Plans shall be informed by a Town Centre Health Check and shall incorporate a public realm enhancement plan. Funding at both national and EU Level should be targeted to empower local communities to make a difference at a local level.

3.2.4. Objective EO 22

Promote the sustainable development of vacant residential and regeneration sites in towns that are the subject of a statutory Local Area Plan, through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned for Town Centre, Regeneration and Residential uses.

3.2.5. Newbridge Local Area Plan 2013-2021

3.2.6. This LAP provides that the site is zoned Objective C - New Residential. It is identified as plot C1. The site is subject to SRO 5b) to build a link road from the R445 at Ballmany to the Green Road. Section 7.8.3 of the plan states that deficiencies in the wastewater drainage infrastructure services are a barrier to growth. It is envisaged that the upgrading of the Newbridge Eastern Interceptor Sewer will commence in

2015 and that network upgrades to the Liffey Valley Catchment will commence in 2016. Capacity constraints act as a hindrance to future development. Objective WW01 is to secure upgrades to the interceptor sewer and catchment.

4.0 Planning History

On the site

- 4.1. ABP-302922-18 – The board refused permission on 12th February 2019 for a development of 180 houses on the site for 3 reasons that cited layout and design, flood risk; and a failure to comply with the objective SRO5b of the local area plan to provide a link road and comply with DMURS in the proposed street layout. The report of the inspector recommended refusal on the first 2 grounds. The board's third reason relating to the link road was not recommended by the inspector. The submission from Irish Water on that application stated that the proposed connection to the foul sewer could be facilitated. There was no qualification to that advice.
- 4.2. Reg. Ref. 12/562 – The council granted permission for housing on the site on 26th April 2013. Condition no. 41 stated that development could not commence until works had begun on the Newbridge Eastern Interceptor Sewer and condition 42 stated that housing could not be occupied until that sewer and other upgrades to the town's system had been completed. The description of the development referred to 102 houses and to previous permissions on the site granted under 05/271 and 10/1112.

Elsewhere in Newbridge

- 4.3. ABP-303065-18 & ABP-303069, Reg. Ref. Nos. VSL012 & 013 – There are appeals before the board against the inclusion on the Vacant Site Register of 2 plots of land across the Liffey from the site to which this report refers.
- 4.4. ABP-302141-18 – on the 31st October 2018 the board granted permission for 343 homes and a creche on a site at Kilbealin in Newbridge some distance to the west of the site to which this reports refers. Condition no. 2 stated that no works would commence until contract 2A of the Upper Liffey Valley Sewerage Scheme had commenced and that no homes would be occupied until it was complete. There is

an appeal against the entry of part of this site onto the register of vacant sites, ABP-303070-18, Reg. Ref. VSL015 refer.

- 4.5. PL09. 249158, Reg. Ref. 16/975 – On the 26th January 2018 the board granted permission for 385 homes and a creche on a site at Station Road, Newbridge some distance to the north of the current site. Condition no. 3 stated that no works would commence until contract 2A of the Upper Liffey Valley Sewerage Scheme had commenced and that no homes would be occupied until it was complete.
- 4.6. PL09. 249038, Reg. Ref. 16/658 – The board granted permission in April 2018 for 222 houses, a creche and a nursing home on at site at Ballymany, Newbridge across the R445 Road from the current site. There was no condition restricting the commencement or occupation of the development pending the Upper Liffey Valley Sewerage Scheme. The site was entered on the vacant site register by the council under Reg. Ref. VS002 in October 2018. An appeal against the entry was made to the board, **ABP-303049-18** refers. The board determined that the site was not a vacant site within the meaning of section 5(1)(a) of the 2015 act because the assessment of the site by the planning authority did not account for the 12 month period up to the entry of the site on the register. The wastewater deficiencies in Newbridge were raised in the appeal against the entry but were not cited by the board in its determination of the appeal.
- 4.7. ABP-301818-18 – On 29th September 2018 the board granted permission for 281 houses and a creche on a site at the Paddocks in Newbridge some distance to the north of the current site. There was no condition restricting the commencement or occupation of the development pending the Upper Liffey Valley Sewerage Scheme.

5.0 Planning Authority Decision

5.1. Planning Authority Notices

A recommendation was made by the council's Senior Planner on 12th June 2018 stating that the site was zoned and was currently vacant and undeveloped and a notice under section 7(1) should be issued to the owner.

The council issued a notice to the appellant under section 7(1) of the 2015 act on 15th June 2018 stating that it considered the site to be vacant for the purposes of the act for the following reasons –

- It is zoned in the Newbridge LAP 2013-2019
- It is in an area where there is a need for housing
- The site is suitable for housing
- The site or the majority of the site is vacant or idle,

and that the council intended enter the site in the Vacant Sites Register.

The appellant responded to the notice referring to conditions 41 and 42 on the grant of permission 12/562, and similar conditions on previous permissions, that restricted the development and occupation of housing on the site until the foul sewerage system was upgraded. The required upgrades were still outstanding and so the permission cannot be implemented. The appellant has entered into consultation with the board for a new SHD application. The board's opinion referred to the road objective SRO 5b over the site and the wastewater infrastructure constraints in the area. As the delays in advancing housing on the site were outside the appellant's control it should not be on the register.

A report from the Senior Planner in the council dated 9th October 2018 referred to a grant of permission by the board on a neighbouring site under PL09. 249038 on 13th April 2018 and to the north under ABP-301818-18 on 24th September 2018 to support a conclusion that the adequate foul sewerage was available to support development on the area including the current site. The fact that the landowners have engaged pre-application consultations does not alter the current vacancy of the site. The planner is satisfied that the site was vacant for at least 12 months to 15th June 2018 and continued to be so, and recommended that the site be entered on the register.

The council issued a notice to the appellant under section 7(3) of the 2015 act on 26th October 2018 informing it that the site had been entered on the Vacant Sites Register.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal was lodged on 21st November 2018. It refers to conditions 41 and 42 on the grant of permission 12/562, and similar conditions on previous permissions, that restricted the development and occupation of housing on the site until the foul sewerage system was upgraded. The required upgrades were still outstanding, as demonstrated by a response to a pre-application enquiry from Irish Water dated 21st December 2017 which refers to downstream capacity constraints in the foul sewer, to ongoing local improvements and to Contract 2B of the Upper Liffey Valley Sewerage Scheme which is scheduled for completion in 2021. The board issued an opinion on a pre-application consultation on 22nd February 2018 which required further survey and design work to progress housing on the site. It was therefore not possible to proceed with housing on the site in the appropriate period and so it should not be on the vacant site register.

6.2. Planning Authority Response

The response from the council refers to grants of permission by the board on a neighbouring site under PL09. 249038 on 13th April 2018 and on another to the north under ABP-301818-18 on 24th September 2018 to support a conclusion that the adequate foul sewerage was available to support development on the area including the current site. It also refers to a the grant of permission for 343 houses at Kilbealin under ABP-302141-18 issued by the board on 31st October 2018. In each case the board was satisfied that permission could be granted for housing in the town before works had commenced on Contract 2A of the Upper Liffey Valley Sewerage Scheme. The owners of the site have asserted that they can construct sufficient length of the link road through their site to allow housing development to proceed, and it is questionable whether the land cannot be developed in the absence of other parts of that road.

6.3. Further Responses

The appellant's response to the council's response stated that the council's response was not based on the provisions of the 2015 Act. The applicable period is the one for 12 months before the site was entered into the register by the council on 26th

October 2016. The site was not suitable for housing in that period following the criterion set out in section 6(5)(b) because the public infrastructure required for housing was not available at the site due to the deficiencies in the foul sewerage in the area, as demonstrated by condition no. 2 of the permission attached to the grant of permission under ABP-302141-18 which restricted the provision of the housing authorised by that permission in the period relevant to this case. A grant of permission in Newbridge is not a relevant consideration if the site was not served by the public infrastructure necessary to enable housing to be provided and served. The site was not so served and so was not vacant under the legislation.

The council's response to the appellant's response to the council's response to the appeal stated that it had no further observations.

7.0 Assessment

- 7.1. The notices issued by the council were not explicit that the site was regarded as residential land under section 5(1)(a), as opposed to regeneration land under section 5(1)(b). However this is a reasonable assumption given the location and state of the site and all parties' submission are based on the criteria for a vacant site on residential land set out at section 5(1)(a). The council entered the site on the register on 26th October 2018, so the period to be considered when determining whether the site is vacant and should be on the register is from 27th October 2017 to that date. Whether the criteria set out in section 5(1)(a) applied during that period is therefore examined below.
- 7.2. The site is zoned for housing in the local area plan that has been in force since 2013. The recommendation of the Senior Planner of the council dated 9th October 2018 stated that the site was vacant and had been so for more than 12 months. This is consistent with the state of the site observed at the time of inspection. The appellant has not contradicted this statement. The notice of intent issued by the council under section 7(1) of the act stated that the site was in an area where there was a need for housing. This statement was not contradicted by the appellant. The information before the board therefore demonstrates that the site is zoned for housing, is in an area in need of housing and that it was vacant in the period of 12 months before the council entered it on the register on October 26th 2018. No information is available that would support the contrary conclusions on these issues.

- 7.3. The question therefore arises as to whether the site was suitable for housing in the period from 27th October 2017 to 26th October 2018 and was served by the public infrastructure and facilities necessary to enable housing to be provided and serviced. The site adjoins the existing road network serving the town which is adequate to service residential development. The objective SRO5b of the local area plan for a link road that would cross the site would not prevent or delay the provision of housing on the site. It simply requires that the layout and design of the internal road network of any such housing would be compatible with the provision of a link road across the site.
- 7.4. Resolution of the question as to whether a site is adequately served by foul sewerage to serve housing there depends on matters of fact regarding the physical condition and operation of the sewerage system. Irish Water is the appropriate body to report such facts. However in this case resolution of the question also depends on how the limited spare capacity in an existing system would be allocated to proposed housing on various sites, which necessarily involves planning and policy decisions that come within the remit of the council and, in certain cases, the board. So the outcome of planning applications and appeals which involve formal consultation with Irish Water and decisions by the council or the board after due process and consideration provide useful evidence to determine the outstanding question in the current case. This available evidence in this regard is contradictory. The submission from Irish Water on application ABP-302922-18 dated 4th December 2018 would have supported a grant of permission on the current site without any restriction on the completion or occupation of that housing due to foul sewerage constraints. The board authorised housing development on an adjacent site on 13 April 2018 under PL09. 249038 without any restriction regarding foul sewerage. The board also granted permission for housing 29th September 2018 to the north under ABP-301818-18 without such conditions. Against this the previous permission granted by the planning authority on the site under Reg. Ref. 12/562 was subject to conditions requiring delays pending upgrade of the foul sewer. Similar conditions were attached to the permissions for housing in Newbridge issued by the board in 2018 under PL09. 248158 and ABP-302141-18. Section 7.8.3 of the current LAP also refers to deficiencies in the wastewater drainage in the town.

- 7.5. So there is evidence that would allow the board to conclude that the site was not properly served by foul sewerage in the relevant period and so was not suitable for housing and so was not a vacant site and should be removed from the register. There is also evidence to support the other conclusion on the question.
- 7.6. In these circumstances I would advise the board to conclude that the site was not served by the public infrastructure necessary to support housing on the site in the relevant period and so was not suitable for housing then and that it should be removed from the register. This is because inclusion on the register would impose ongoing financial penalties on the appellant, and the appellant has made a reasonable argument that such penalties should not be imposed which the alternative argument submitted by the council is not sufficient to overcome. Furthermore the cancellation of the entry of the site on the register would not preclude it being entered again if it remained unused for housing and better evidence was available that demonstrated that it had been suitable for housing in the period relevant to the entry on the register.

8.0 Recommendation

- 8.1. I recommend that the board determine in accordance with section 9(3) of the Urban Regeneration and Housing Act 2015, as amended, that the site at Ballymany, Newbridge, Co. Kildare, Ref No. VS001, was not a vacant site for the period of 12 months before its entry on the register of vacant sites and that notice be given to the planning authority that it shall cancel that entry on the register.

9.0 Reasons and Considerations

Having regard to

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal and the subsequent submissions from the Planning Authority and the appellant,
- (c) The provisions of the Local Area Plan for Newbridge 2013-2019, in particular section 7.8.3 of the plan,

(d) The grants of permission for housing in Newbridge under Reg. Ref. 12/562, ABP-302141-18 and PL09. 249158 (Reg. Ref. 16/975) and the conditions attached to them which restricted occupation of the authorised housing until works to address the deficiencies in the foul sewerage system serving the town had been carried out, and

(e) The report of the Planning Inspector,

the Board concludes that the site was not a vacant site under Part 5(1)(a) of the Urban Regeneration and Housing Act 2015, as amended, in the period of 12 months before the entry of the site onto the register of vacant sites on 26th October 2018 because it was not suitable for the provision of housing then due to deficiencies in the foul sewerage system serving the town.

Stephen J. O'Sullivan
Planning Inspector

10th October 2019