



An
Bord
Pleanála

Inspector's Report ABP-303065-18

Type of Appeal	Section 9 Appeal against entry of land on the Register of Vacant Sites
Location	Great Connell, Newbridge, Co Kildare.
Planning Authority	Kildare County Council.
Planning Authority VSL Reg. Ref.	VS012.
Appellant	Aston 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 Great Connell, 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 lies on the south eastern periphery of Newbridge. It has an area of c12.3ha and is in agricultural use. Part of its northern boundary adjoins a housing estate, while another part adjoins the curtilage of functional buildings in commercial use. The eastern boundary fronts onto a rural road bounded by hedgerows for c260m. The rest of the site's boundaries adjoin other agricultural land. There are large modern commercial buildings in an estate on the other side of the road to the north-east of the site.

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 by 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 with reference *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 C12. Roads objective SRO 5a) is to seek to construct a southern relief road from the R445 at Littleconnell to Kilbealin with a new bridge over the Liffey. The line of the objective crosses the site. 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

- 4.1. PL09. 218894, Reg. Ref. 05/1564 – On 16th February 2007 the board refused permission for a commercial and community centre on part of the adjoining site to the north in the same landholding for a single reason that stated that the development would be premature pending the determination of a layout for the Newbridge Outer Relief Road.
- 4.2. ABP-303069-18, Reg. Ref. VSL013 – There is a concurrent appeal against the inclusion on the Vacant Site Register of land in the same landholding immediately of the north of the site to which this report refers.
- 4.3. Reg. Ref. 17/653 – On 13th September 2017 the council granted permission for a development that includes the construction of part of the planned inner relief road to the north-east of the current site from Great Connell to the R445.
- 4.4. 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.
- 4.5. 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 some distance to the west of 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.

- 4.6. 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 west of the current site. There was no condition restricting the commencement or occupation of the development pending the Upper Liffey Valley Sewerage Scheme.
- 4.7. ABP-302141-18 – on the 31st October 2018 the board granted permission for 343 homes and a creche on the site at Kilbealin in Newbridge to the west of the current site on the other side of the Liffey. 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.
- 4.8. ABP-302922-18 – The board refused permission on 12th February 2019 for a development of 180 houses at Ballymany some distance to the west of the current site for reasons that cited design, flood risk and a failure to comply with the objective SRO5 of the local area plan to provide a link road and comply with DMURS in the proposed street layout.

5.0 Planning Authority Decision

5.1. Planning Authority Notices

A recommendation was made by the council's Senior Planner on 13th June 2018 stating that the site was zoned, had no planning history, 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.

There was no response to this notice and a report from the Senior Planner in the council dated 22nd October 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 to issue a notice on 26 October 2018.

6.0 The Appeal

6.1. Grounds of Appeal

The site is not a vacant site because it does not have adequate roads infrastructure and so is not suitable for housing, as demonstrated by the refusal of permission upon it under PL09. 218894. The circumstances which led to that refusal have not changed as it is still an objective of the local area plan to provide an outer relief road over the site. The absence of the road means that the site lacks adequate infrastructure to be deemed suitable for housing following section 6(5) of the act. The test is applied retrospectively to the 12 months prior to the issuing of the notice of intent by the council so the fact that part of the road is now under construction is not relevant. The lack of sewerage capacity in Newbridge also renders the site unsuitable for housing and so not a vacant site. Statements from Irish Water that were published on its website are quoted to support the contention that the Upper Liffey Valley Sewerage Scheme needed to be completed to provide adequate infrastructure to allow residential development to occur in Newbridge, as is the report of the inspector on the confirmation of a CPO associated with the Upper Liffey Valley Sewerage Scheme CH09. 3337. Other recent grants of permission for housing in Newbridge have been subject to conditions restricting their occupancy in advance of further progress under the Upper Liffey Valley Sewerage Scheme under PL09. 249158 and ABP-302141. The condition of the site does not does not affect the amenities of the area under section 6(6) of the act.

6.2. Planning Authority Response

The response from the council states that a housing needs assessment was completed on 12th June 2018 which identified significant demand for housing in Newbridge.

In relation to the roads objective, the council has granted permission under Reg. Ref. 17/563 for a development that includes part of the relief road sought under objective SRO5a) to the east of the site from the R445 to Great Connell. Under ABP-302141-18 the board granted permission for housing on lands to the west on the other side of the Liffey that are also subject to the same roads objective. Therefore, notwithstanding the refusal of permission on part of the neighbouring site in 2007 under PL09/218894, it is evident that the roads objective does not render the site unsuitable for housing.

The board's grant of permission for housing in Newbridge under ABP-302141-18 and ABP-301818-18 had due regard to the progress of the Upper Liffey Valley Sewerage Scheme and demonstrated that it was sufficient to render zoned lands in the town, including the current site, suitable for housing.

Therefore, having regard to the residential zoning of the site, its identification as a parcel that can provide c518 homes, and its location in an area where there is a clearly demonstrated need for new housing, it should be included on the register of vacant sites to encourage its development in accordance with the local area plan and the core strategy of the county development plan.

6.3. Further Response

The appellant's response to the council's response accepted the need for housing in Newbridge.

The fact that permission could be granted on the site and has been granted on other sites does not necessarily imply that the site was served by the public infrastructure and facilities necessary to enable housing to be provided and serviced which is the criterion specified in the 2015 act. The current site differs from that at Kilbealin which was the subject of the grant of permission under ABP-302141-18 because it is served by a substandard existing road and development upon it is wholly reliant on the planned road while the site of the permitted scheme already benefits from satisfactory access arrangements and is not so reliant on the planned road. The permitted scheme would have access from a second entrance that would not be on the planned road. It is only happenstance that the part of the planned relief road had been authorised under Reg. Ref. 17/563 has been brought forward and it was

subject to a prior condition (no.5) that required the detailed design of that road was agreed with the council and permission would have been refused in the absence of that condition. This is the basis on which that development differed from that refused by the board on the current site under PL09. 218894. Sections 5 and 7 of the 2015 act so not authorise the inclusion of a property on the register simply where permission exists for 3rd party landowners to provide public infrastructure but only where the land was served by the required public infrastructure for the duration of the applicable 12 month period.

The grant of permission under ABP-302141-18 does not allow housing to proceed or be occupied at Kilbealin at this time because of the operation of condition no. 2. The grant of permission at the Paddocks under ABP-301818-18 does not contain such a restriction due to a prior permission on the site.

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 recommendation of the Senior Planner of the council dated 15th June 2018 stated that the site was undeveloped and vacant. This is consistent with the state of the site observed at the time of inspection. However none of the reports or documents prepared by the council state that the site was vacant for a continuous period of 12 months before the entry of the site onto the register. The board would have to be satisfied as a matter of fact that the site was vacant for that period to confirm the entry. There is no evidence before it that would support such a conclusion, even though the issue was not contested by the appellant. This omission means that the entry of the site onto the register should be cancelled because adequate information is not before the board for it to conclude that the

majority of the site was vacant or idle between 27th October 2017 and 26th October 2018.

- 7.3. The council's response to the appeal stated that the site was in an area in which there was a need for housing and supported this by reference to the county's core strategy, housing strategy, the number of households qualified for social housing support who have specified Newbridge as an area of choice, house prices and rents in the town and the proportion of houses available for purchase or rent in the town. The submitted information is applicable to the period between 27th October 2017 and the 26th October 2018. The appellant accepted that the site is in an area in which there is a need for housing.
- 7.4. The site adjoins the built up area of Newbridge. The existing adjacent urban road network serves housing and commercial premises in the town, as is apparent from an inspection of the site and current maps. Housing on the site could be given access to that road network by works on land controlled by the appellant and relatively minor works to public road. The extent of the necessary works to provide access would be usual for any housing development on the edge of a town. It is therefore concluded that the existing road network is adequate to support housing on the site. The assertions to the contrary in the submissions from the appellant are incorrect. The objective SRO5a of the local area plan for a relief 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 relief road across the site, as was achieved in the layout for the housing on the other side of the Liffey at Kilbealin permitted by the board under ABP-302141-18 on lands that are subject to the same objective for a southern relief road for the town. The completion of the relief road is not prerequisite for development of the site. The previous refusal of permission by the board for a development on part of the current site in 2007 under PL09. 218894 did not imply that it was. Rather it was based on a failure of a particular proposal at the time to demonstrate that it would be compatible with the provision of a road that would benefit the town as a whole. The site was therefore served by adequate public roads infrastructure and facilities to enable housing on the site to be provided and serviced and was so between 27th October 2017 and 26th October 2018.

7.5. Section 7.8.3 of the local area plan and conditions no. 2 of the permission issued under ABP-302141-18 and no. 3 of that issued under PL09. 249158 support a conclusion that the foul sewerage system in the town was not adequate to service housing on the site between 27th October 2017 and 26th October 2018. The latter conditions were informed by reports from Irish Water describing the deficiencies in the foul sewerage system. The absence of similar reports and conditions on the permissions granted under 249038 and PL09. ABP-301818-18 may have related to specific circumstances of the sites on the western side of the town or their planning history. They do not provide sufficient countervailing evidence to supplant the conclusion about the foul sewerage system supported by the provisions of the local area plan and the conditions on the other permissions cited above. It is therefore concluded that the current site was not served by the public infrastructure and facilities necessary to enable housing to be provided and serviced between 27th October 2017 and 26th October 2018. So it was not suitable for the provision of housing within the meaning of section 5(1)(a)(ii) in that period and so was not a vacant site under the act and its entry in the register should be cancelled. The appellant was correct to point out the difference between a site that is suitable for the provision of housing and one on which permission may be granted. The prospective resolution of the sewerage deficiency in the town means that houses can be planned, permitted and possibly constructed in the timeframe contemplated by a planning permission. However the houses would only provide housing when they actually house people, and this can only occur when the resulting sewage can be properly drained, treated and disposed of. This could not have happened on the site between 27th October 2017 and 26th October 2018.

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 Great Connell, Newbridge, Co. Kildare, Ref No. VS012, 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 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.

Furthermore sufficient information has not been presented to the Board to allow it to conclude that the site was vacant or idle for the period of 12 months before its entry on the register and that the criterion for a vacant site as section 5(1)(a)(iii) of the 2015 act was satisfied.

Stephen J. O'Sullivan
Planning Inspector

3rd October 2019