



An  
Bord  
Pleanála

## Inspector's Report ABP-303069-18

---

<b>Type of Appeal</b>	Section 9 Appeal against entry of land on the Register of Vacant Sites
<b>Location</b>	Great Connell, Newbridge, Co Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS013.
<b>Appellant</b>	Aston Ltd.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	21 <sup>st</sup> August 2019.
<b>Inspector</b>	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 western periphery of Newbridge. It has an area of c5ha. There is a house in its north-eastern corner. However its condition at the time of inspection indicated that it may not be in residential use. Its southern part contains commercial buildings of functional form with an ancillary car park. Most of the rest of the site is in agricultural use. Its northern boundary adjoins a suburban housing estate. There are large commercial buildings in an estate across the road to the east. The road in front of the site has been upgraded to specifications applicable to an urban area in extensive commercial use, with a large roundabout on the site's frontage. At the time of inspection civil works had occurred on the site to provide construction access from that roundabout across the middle 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, is 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 to *inter alia*

## 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 C13. Roads objective SRO 5a) is to seek to construct a southern relieved 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 upgrade to the interceptor sewer and catchment.

## 4.0 Planning History

- 4.1. PL09. 218894, Reg. Ref. 05/1564 – On 16<sup>th</sup> February 2007 the board refused permission for a commercial and community centre on part of the current site 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-303065-18, Reg. Ref. VSL012 – There is a concurrent appeal against the inclusion on the Vacant Site Register of the land immediately of the site to which this report refers.
- 4.3. Reg. Ref. 17/653 – On 13<sup>th</sup> September 2017 the council granted permission for a development that includes the construction of part of the planned inner relief road to the east of the current site from Great Connell to the R445.
- 4.4. ABP-PL09. 249158, Reg. Ref. 16/975 – On the 26<sup>th</sup> January 2018 the board granted permission for 385 homes and a creche on a site at Station Road, Newbridge 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. ABP-301818-18 – On 29<sup>th</sup> September 2018 the board granted permission for 281 houses and a creche on a site at the Paddocks in Newbridge 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
- 4.6. ABP-302141-18 – on the 31<sup>st</sup> 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. 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.

## **5.0 Planning Authority Decision**

### **5.1. Planning Authority Notices**

The council issued a notice to the appellant under section 7(1) of the 2015 act 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 council issued a notice to the appellant under section 7(3) of the 2015 act on 26<sup>th</sup> October 2018 informing it that the site had been entered on the Vacant Sites Register to issue a notice on 26 October 2018.

### **5.2. Response to Notices**

The appellant responded to the section 7(1) notice on 29<sup>th</sup> June 2018 stating that it was keen to develop the site but the required infrastructure was not in place to do so in Newbridge because the foul sewerage is inadequate. The constraint would not be removed until the Upper Liffey Valley Sewerage Scheme progressed. That scheme is subject to court proceedings about a CPO.

### **5.3. Planning Authority Reports**

The Senior Planner made a report on 22<sup>nd</sup> September 2018 after a response was received to the notice of intent issued under section 7(1). It refers to decisions of the board to grant housing elsewhere in Newbridge including a grant permission for 280 homes on 13<sup>th</sup> April 2018 under PL09. 249038, and another for 281 homes on 24<sup>th</sup>

September 2018 under ABP-301818-18. So the board has determined that the development of housing can proceed in Newbridge before the Upper Liffey Valley Sewerage Scheme. The report also stated that the Senior Planner was satisfied that the site was vacant for 12 months before the notice was issued under section 7(1) and that it continued to be vacant. It recommended

## **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 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.

Furthermore part of the site is not within the appellant's ownership (the curtilage of the house in the north-eastern corner of the site). A copy of a land registry map from folio KE4414 is submitted to shown the difference between the boundaries of the appellant's land and the plot to which the notice of entry of the Vacant Site Register refers. It can therefore be inferred that the owner of part of the site was not properly notified of the intention of the council to add the site to the register and so the

requirements of section 7(3) of the act have not been discharged. It would also be unclear what share of any levy would fall on the appellant due to its partial landholding on the site. The legislation does not allow the documentation to be retrospectively changed. This flaw would prevent confirmation of the entry of the site onto the register.

## **6.2. Planning Authority Response**

The response from the council states that a housing needs assessment was completed on 12<sup>th</sup> 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 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 c87 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 3<sup>rd</sup> 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.

The council did not offer any defence to the failure to map the appellant's property and so it would be unlawful for the board to endorse registration of 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 26<sup>th</sup> October 2018, so the period to be considered when determining



whether the site is vacant and should be on the register is from 27<sup>th</sup> 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 report of the Senior Planner of the council dated 22<sup>nd</sup> October 2018 contained a statement that the site was a vacant site for at least 12 months before the issuing of the notice of intent to enter the site on the register and continued to be so. There is no statement from the council or any of its officers that describes the use of the site at any time. However at the time of inspection it was apparent that the majority of the site was vacant or idle within the meaning of section 5(1)(a)(iii) of the act and that it had been in a similar condition for several years. The appellant did not seek in any of its submission to claim otherwise. Adequate information is therefore before the board for it to conclude that the majority of the site was vacant or idle between 27<sup>th</sup> October 2017 and 26<sup>th</sup> October 2018. There is no information before the board to support the alternative conclusion on this issue.
- 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 27<sup>th</sup> October 2017 and the 26<sup>th</sup> 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 and has direct access to the existing road network which serves housing and commercial premises there, as is apparent from an inspection of the site and current maps. 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 relationship of that site to the existing road network serving the town is not qualitatively different to that which pertains at the current site, contrary to the assertions of the appellant. 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 but was based on a failure of a particular proposal to demonstrate that it would be compatible with the provision of a road that would benefit the town as a whole. The site is therefore served by adequate public roads infrastructure and facilities to enable housing on the site to be provided and serviced and was so between 27<sup>th</sup> October 2017 and 26<sup>th</sup> 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 27<sup>th</sup> October 2017 and 26<sup>th</sup> October 2018. The latter conditions were informed by reports from Irish Water describing the deficiencies in the foul sewerage system. The absence of a similar condition on the permission granted under ABP-301818-18 may have related to specific circumstances at the Paddocks or its planning history. In any event it does 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 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 27<sup>th</sup> October 2017 and 26<sup>th</sup> 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 the 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 27<sup>th</sup> October 2017 and 26<sup>th</sup> October 2018.

7.6. The appellant has submitted a copy of a map from the land registry folio KE4414 to support its claim that it does not own the entire site. An assertion to this effect would not necessarily prevent the confirmation of the entry of the site onto the register because the appellant's opportunity to defend its own property rights have not been affected. The appeal merely raises the possibility that the rights of another unidentified party might have been affected. The 2015 act has separate procedures allowing appeal against a demand for a levy and the amount of a levy, so entry of the site onto the register would not impose a financial obligation on the appellant in respect of land that it did not own. However the council has not demonstrated how it determined the appropriate boundaries of the site for entry into the register or identified the owners of the entire site. The council submitted a written copy of an entry in the land register, but not the accompanying map. The information before the board in this case therefore supports the conclusion that the council did not fulfil its obligation to notify the owner of every part of the site under section 7(1) of the act, and it would therefore be unsafe to confirm its entry on the vacant site 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 Great Connell, Newbridge, Co. Kildare, Ref No. VS013, 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 the Board is not satisfied, on the basis of the information submitted in connection with this appeal, that the Planning Authority had fulfilled its obligation section 7(3) of the said act to give notice to the owner of each part of the site of the authority's intention to enter it on the register of vacant sites.

---

Stephen J. O'Sullivan  
Planning Inspector

3<sup>rd</sup> October 2019