



An
Bord
Pleanála

Inspector's Report ABP-303070-18

Type of Appeal	Section 9 Appeal against entry of land on the Register of Vacant Sites
Location	Kilbealin, Newbridge, Co Kildare.
Planning Authority	Kildare County Council.
Planning Authority VSL Reg. Ref.	VS015.
Appellant	Ardstone Residential Partners Fund
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 Kilbealin, 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 in the town of Newbridge c1km south of its town centre. It has an area of c9.3ha and is currently low lying pasture inside a meander of the Liffey. The western boundary is along the R416 Athgarvan Road. The land across the road from the site is occupied by suburban housing and a cemetery.

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 refers *inter alia* to whether the site was served by public infrastructure and facilities necessary to enable housing to be provided and serviced, while section 6(5)(c) refers to whether was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.

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 C15. 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

On the site

- 4.1. 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 that incorporates 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.

Elsewhere in Newbridge

- 4.2. 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.
- 4.3. 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.
- 4.4. 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.

- 4.5. 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.
- 4.6. 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 14th 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.

There was no response to this notice and a report from the Senior Planner in the council dated 22nd October 2018 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 appellant accepts that the site is zoned for housing, is in an area in need of housing and is not used for housing but for agriculture. However the site is not suitable for housing because the foul sewerage infrastructure is not available to service that housing, as demonstrated by condition 2 of the grant of permission made under ABP-302141-18. The site is also subject to a road objective SLO5a) under the local area plan and so should not be subject to a levy under the terms of Appendix 3 of Circular PL7/2016 as it is a site identified by the local authority as reserved for capital works. Under Ref No VS0022 the board has previously removed a site from the register because it was subject to a roads reservation. The physical condition of the site renders it unsuitable for housing because the risk of flooding on part of it puts it in Flood Risk Zone B and housing can only be provided there after mitigation works to fill the site, as required under permission ABP-302141-18.

6.2. Planning Authority Response

The response from the council states that the grant of housing on the site on 22nd November 2018 under ABP-302141-18 demonstrated that it was suitable for housing but is currently vacant, so its entry on the register should be confirmed. The board circulated this response for comment

6.3. Further Response

The appellant's response to the council's response stated that the council's response did not substantively engage with the grounds of appeal. The site is not suitable for housing following the criterion set out in section 6(5)(b) and (c) of the act regarding public infrastructure and the physical condition on the site as demonstrated by condition no. 2 of the permission attached to the grant of permission under ABP-302141-18. The appellant has endeavoured to find a temporary solution to

overcome the foul sewerage constraint but so far none has been agreed with Irish Water or the council. The provision of a roads objective across the site sterilises a considerable part of the site and appendix 3 of Circular PL7/2016 says that sites reserved for capital works such as roads should be subject to a levy. The presence of roads objective was identified as a reason to omit a site from the register in case no. VS022. The board circulated this response for comment.

The response from the council dated 28th February 2019 stated that work had commenced under Contract 2A of the Liffey Valley Regional Sewerage Scheme and should take 2 years to complete. The board decided not to circulate this response for comment.

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. All parties accept that the site is zoned for housing and in an area in which there was a need for housing. The latter conclusion is supported by a housing needs assessment for the town prepared by the council and submitted in this case by the appellant. Its conclusions are applicable to the period between 27th October 2017 and the 26th October 2018. The information before the board therefore demonstrates that the site was zoned for housing and in an area in need of housing in the applicable period.
- 7.4. Section 7.8.3 of the local area plan and condition no. 2 of the permission issued under ABP-302141-18 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 said condition was informed by a report from Irish Water describing the deficiencies in the foul sewerage system. No submission from the council would support the alternative conclusion about the system. 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. There is a 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 constructed in the timeframe contemplated by the planning permission that applies to the site. 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.
- 7.5. The site adjoins the built up area of Newbridge. The existing urban road network by the site already serves housing, as is apparent from an inspection of the site and current maps. Housing on the site could be given access to that road network. The permission for housing on the site issued under ABP-302141-18 contains no condition restricting or delaying the provision of housing on the site by reference to any deficiency in the road network serving the site. The objectives of the local area plan relating to the provision of a southern ring road do not prevent or constrain the

provision of housing on the site. They merely require the layout and design of the internal road network of any such housing to be compatible with the provision of a relief road across the site, as was achieved in the authorised layout under ABP-302141-18. The completion of any other part of the relief road is not a prerequisite for development of the site. 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. The arguments from the appellant regarding roads objective SR05a of the local area plan are incorrect because that objective does not prevent housing being provided on the site. There is no basis in the act to conclude that a site is not suitable for housing because the layout of housing on that site would be affected by objectives of a statutory plan. If such objectives affected how much or how housing could be provided on the site, then this would be reflected in the value of the site and the amount of a levy under the act. The current case is not concerned with the amount of any levy on the site. There is a separate procedure for a landowner to dispute that issue. The quotation from appendix 3 of the Circular PL7/2016 in the grounds of appeal omits the context provided by the words 'local authority owned sites' at the start of the sentence. The cited advice in the circular does not support a conclusion that any site with a roads objective should be omitted from the register. While the draft order recommended by the inspector in case 93.VV022 included such a reason, the order made by the board did not, indicating that board did not interpret the relevant sentence in the circular in the manner sought by the appellant in this case. Moreover, the provisions of a circular letter from the minister do not provide authoritative guidance in the interpretation of a statute and previous board decisions (or the inspectors' report which informed them) do not establish any precedent that the board is bound to follow in subsequent cases, although of course they merit some consideration in order to avoid unnecessary inconsistency in the implementation of the act.

- 7.6. The site requires works to provide housing upon it, including some filling of a marginal part of it which is in flood risk zone B. This work was included in the proposed development authorised under ABP-302141-18. The extent of the required works would not be exceptional and would be similar to the groundworks to provide housing on any greenfield site. It would be absurd to conclude that a requirement for such unexceptional works meant that the physical condition of the

land comprising the site was not suitable for housing in the manner sought by the appellant. Such an approach would nullify the provisions of the act because any vacant site is likely to require some works to remedy its vacancy.

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 Kilbealin, Newbridge, Co. Kildare, Ref No. VS015, 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) Condition no 2 on the grant of permission for housing on the site under ABP-302141-18 which restricts 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

10th October 2019