



An  
Bord  
Pleanála

## Inspector's Report ABP-303983-19

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<b>Type of Appeal</b>	Section 9 Appeal against Section 7(3) Notice
<b>Location</b>	Lands at Summerhill, Portlaoise, Co. Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority VSL Reg. Ref.</b>	VSL/PL/2016/57
<b>Site Owner</b>	Bircrest Ltd.
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	18 <sup>th</sup> July 2019
<b>Inspector</b>	Erika Casey

## 1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Laois County Council, stating their intention to enter a site referred to as lands at Summerhill, Portlaoise, Co. Laois onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1)(a) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VSL/PL/2016/57, has a one registered owner: Bircrest Ltd. The Section 7(3) Notice was also issued to both Directors of Bircrest Limited – Kenneth Birrane and Malcom Weston.

## 2.0 Site Location and Description

- 2.1 The subject greenfield site has an area of 3.03 ha and is located on the eastern side of the R941, east of the Aghnaharna estate. To the south of the site, is the existing Holy Family campus. To the north are further greenfield lands with a water /attenuation feature. Access to the site is via a spur from a roundabout on a distributor road that links to the Stradbally Road (N80) to the north. Development in the vicinity of the site is low density residential and suburban in character.

## 3.0 Statutory Context

### 3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(a) of the Act. The Notice is dated the 21<sup>st</sup> of February 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates. Prior to this, a Notice of Proposed Entry on Laois County Council's Vacant Site Register was issued to the landowner on the 27<sup>th</sup> March 2018.
- 3.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

*“the site, or the majority of the site is—*

*(I) vacant or idle, or*

*(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—*

*(a) after it became residential land, and*

*(b) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018”.*

3.1.4 The Act defines ‘residential’ land in Section 3 as follows:

*“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.*

## 3.2. **Development Plan Policy**

### **Portlaoise Local Area Plan 2018-2024**

3.2.1 The subject site is within the administrative area of Laois County Council and the relevant statutory plan is the Portlaoise LAP 2018-2024. Under the plan, the site is zoned Residential 2 – New Proposed Residential: *“To provide for new residential development, residential services and community facilities”.*

3.2.2 It is stated in the plan:

*“This zone is intended primarily for housing development but may include a range of other uses particularly those that have the potential to facilitate the development of new residential communities such as open space, schools, crèches, small shops, doctor’s surgeries, playing fields etc.*

*The improved quality of residential areas and the servicing of orderly development will be priority. New housing and infill developments should be of sensitive design, which are complimentary to their surroundings and do not adversely impact on the amenity of adjoining residents. No piecemeal development can take place unless it does not conflict with the possible future development of the reserved development areas of the town.”*

3.2.3 Section 8.1 of the plan sets out key objectives including:

- *To support and facilitate sustainable intensification and consolidation of the town centre and in established residential areas.*

3.2.4 Chapter 13 of the Plan addresses Housing and is stated:

*“Following economic recovery new residential development will become a key issue for the growth of Portlaoise during this plan period. This plan places a strong emphasis on providing quality residential developments in the existing built envelope of the town.”*

3.2.5 The following policies are of relevance:

**Policy HO5:**

*“To utilise the provisions of the Urban Regeneration and Housing Act 2015 (Vacant Site Levy) to facilitate the appropriate development of vacant sites (residential zoned lands) that are in need of renewal or regeneration.”*

**Policy HO8:**

*“To encourage appropriate housing development on infill and brownfield sites subject to preservation of existing residential amenity, the provision of a high quality design respecting the established character, density and layout, compliance with all traffic safety, quantitative and qualitative standards of the Laois County Development Plan 2017 – 2023.”*

## **Laois County Development Plan 2017-2023**

3.2.6 Section 3.3 of the County Plan sets out further policy regarding the implementation of the Urban Regeneration and Housing Act 2015. Under section 3.3.1, it is detailed that Laois County Council has determined that a need for housing exists in the Towns of Portlaoise, Portarlington, Mountmellick and Graiguecullen.

3.2.7 It is further detailed that:

(a) The projected increase in the number of households as per Core Strategy and Housing Strategy during the period 2017-2023 is significant – **Portlaoise (1,824)**, Portarlington (271), Mountmellick (257), Graiguecullen (215).

(b) The cost of house prices and the cost of renting are increasing indicating increased housing need. A table is set out where it is detailed that according to the PRTB, rents in Portlaoise increased from €548.21 in 2014 to €597.76 in 2015.

(c) Cited area of choice on social housing waiting list (September 2016) indicate housing need in these Towns – **Portlaoise (944)**, Portarlington (377), Mountmellick (322), Graiguecullen (63).

(d) The number of habitable houses available for purchase and for rent is less than 5% of the total number of habitable houses in the area, indicating housing need. A table is set out that details that in Portlaoise there were only 208 units available for sale or rent which is less than 5% of the total number of habitable houses in the area.

3.2.8 The plan sets out a number of policies regarding vacant sites including:

**HP12** *Maintain the Laois Register of Vacant Sites, entering or deleting Sites from the Register in accordance with the Urban Regeneration and Housing Act 2015 and related Departmental Guidance;*

**HP 14** *Implement the provisions of the Urban Regeneration and Housing Act 2015 by entering vacant housing sites on the Laois Register of Vacant Sites and thereafter imposing levies in accordance with the Act within lands zoned Residential 1 or Residential 2 in Portlaoise, Portarlington, Mountmellick, Graiguecullen and any other Laois towns with an identified housing need, as appropriate;*

## 4.0 Planning History

### **Planning Authority Reference 99/1404**

- 4.1 Permission granted in March 2002 for a development comprising 424 dwellings, 154 apartments, 6 no. retirement apartments, 40 bedroom nursing home, a neighbourhood centre to accommodate 10 retail units, offices and associated works. A number of amendments to the parent permission were permitted under application reference 06/2155, 06/2155, 06/2195 and 06/2212.

### **Planning Authority Reference 12/105**

- 4.2 An extension of duration permission was granted in May 2012. The permission expired in April 2017.

### **Lands to the South West**

### **Application Reference 18/450**

- 4.3 Permission granted in March 2019 for a 79 unit residential development.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- 5.1.1 A Vacant Site Report (18.12.2017) was prepared for the site outlining the dates of the visit to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Residential. The following key points are noted:

- Site visits were undertaken on the 27.09.2017 and the 10.10.2017.
- The subject lands comprise an undeveloped parcel of land.
- The lands have been the subject of a number of previous planning permissions for a substantial mixed use development as part of the development of the wider Aghnaharna area.

- Report from Road Design notes that any residential development would be required to satisfy the road objective within the Portlaoise LAP which identifies a new road route through the site.
- Irish Water has confirmed that there is capacity in the network to accommodate planned growth.
- The Laois County Plan 2017-2023 provides an assessment of the areas of the county where there is a need for housing and determines that such a need exists in Portlaoise.
- The lands are suitable for the provision of housing in accordance with the Residential 2 zoning. Permission has previously been granted for residential development on the site.
- The lands comprise a vacant or idle parcel of land and it is recommended that the site be included on the Vacant Site Register.

5.1.4 A further Planning Report (05.11.2018) was prepared in relation to the lands noting that they are zoned Residential 2, are situated in an area in which there is a need for housing, are suitable for the provision of housing and are vacant or idle. It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 An appeal was received from Thornton O' Connor Town Planning on behalf of Bircrest Ltd. on the 19<sup>th</sup> of March 2019. The grounds of appeal can be summarised as follows:

- Note that under the Draft Portlaoise Local Area Plan 2018-2024, the subject lands were proposed to be rezoned Community, Educational and Institutional Use to facilitate the extension of the Holy Family School campus. Following consultation however, with the school, it was determined that the additional lands were not required and the adopted Portlaoise LAP 2018-2024 zoned the

lands as Residential 2.

- The purpose of the Community, Educational and Institutional Use zoning is *“To protect and improve existing residential community, education and institutional facilities and to safeguard their future provision. The land use will provide for local civic, religion, community, educational and other facilities ancillary to neighbourhood uses and services.”* State that the provision of residential development is not included in the uses mentioned for this zoning. Following the rezoning of the lands, the progression of design development of a residential development and associated capital expenditure were halted.
- Note that the LAP came into effect in November 2018 and reinstated the Residential 2 zoning objective. However, from March 2018 until October 2018 it was not possible to progress a residential development on the lands due to non compatibility with the proposed zoning objective.
- Refer to Section 3 of the Act. For a substantial part of 2018, the subject lands were to be rezoned to a land use that does not accord with the definition of ‘residential’ lands as provided in the 2015 Act which specifically states that the objective of the zoning should be solely or primarily for residential purposes. There have been justifiable delays caused by circumstances beyond out the landowners control in bringing forward the site for residential development.
- State that the landowners submitted an application for an adjoining site for 79 units which demonstrates that it is not their intention to land hoard.
- Refer to Section 6 (5) (b) of the Act. Note that the landowners purchased a site at Rockview on the Mountrath Road and a residential development was granted by the Board under Appeal Reference ABP Ref. PL.300322. State that it was determined during this application that there is a significant infrastructural issue in Portlaoise. Refer to correspondence from Irish Water which states that Portlaoise currently has limited spare capacity pending construction of proposed upgrade works and that only a first phase of development on the site of 23 no. units is feasible for connection.
- Detail that Irish Water has not yet confirmed if the recently constructed



development at Aghnaharna can be constructed or if it is similarly constrained by infrastructural deficits.

- State that in their opinion, that it is reasonable to assume that sufficient infrastructural capacity may not be available in Portlaoise to provide for additional new residential development and that ABP should request IW to clarify their position in this regard. Refer to previous precedent at Baneshane, Midleton, Co. Cork (ABP VS0024).

## 6.2. **Planning Authority Response**

6.2.1 No response received.

## 7.0 **Assessment**

### 7.1. **Introduction**

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'residential' lands. The appellant's principal grounds of appeal are that the temporary rezoning of the site under the draft LAP to Community, Education and Institutional use delayed the development of the lands. It is also contended that there is evidence that there are infrastructural constraints in Portlaoise and that in this regard, the subject site is currently not suitable for the provision of housing by reference to the lack of certainty with regard to the provision of public infrastructure and facilities.

7.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of

2015 by substituting Section 5(1)(a)(iii) for the following:

*“the site, or the majority of the site is—*

*(I) vacant or idle, or*

*(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—*

*(a) after it became residential land, and*

*(b) before, on or after the commencement of Section 63 of the Planning and Development (Amendment) Act 2018”.*

7.1.4 Section 6 (4) determines whether or not there was a need for housing in an area within the Planning Authority’s function area by reference to:

*(a) the housing strategy and the core strategy of the planning authority*

*(b) house prices and the cost of renting in the area*

*(c) The number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority’s development plan and*

*(d) whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.*

7.1.5 Section 6(5) of the Act determines the suitability of a site for housing having regard to:

*(a) the core strategy*

*(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced, and*

*(c) whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing.*

7.1.6 I would note that the appellants do not question that the majority of the site is vacant or idle nor do they contest that there is a need for housing in the area. I, therefore,

do not intend to address these matters further. In any event, as set out above, an assessment of the need for housing having regard to the criteria set out under Section 6(4) of the Act is detailed in section 3.3.1 of the County Development Plan. My assessment will, therefore, address specifically section 5(1) (II) as to whether the site is suitable for housing. I will then assess the matter of the temporary rezoning of the site under the draft Portlaoise LAP.

**The site is suitable for housing:**

7.1.10 The criteria for assessing the suitability for housing are set out under section 6(5) of the Act.

The Core Strategy

7.1.11 The subject site is zoned for residential development under the Portlaoise Local Area Plan 2018-2024. As detailed above, the core strategy sets out that there is a significant need for housing in the town over the plan period. The site is located in an established urban area in close proximity to existing social and physical infrastructure and the Town Centre. The site is zoned for residential development with the specific objective to “*To provide for new residential development*”. I consider the proposed site to be entirely consistent with the provisions of the core strategy set out in the County Plan.

Whether the site was served by the public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) necessary to enable housing to be provided and serviced

7.1.12 It is set out by the appellant that sufficient infrastructural capacity may not be available in Portlaoise to provide for new residential development. Reference is made to an application permitted in 2018 at Rockview, Mountrath Road where correspondence from Irish Water (dated May 2017) detailed that only the phased development of 23 units was feasible for connection at that time due to capacity constraints. The appellants also refer to a recent decision at Aghnaharna for 79 dwellings and note that whilst a Pre Connection Enquiry has been submitted, it is not yet known if IW has provided any upgrade works that may provide capacity for the development of additional dwelling in Portlaoise. No correspondence is submitted from IW.

7.1.13 In my view, the appellants have presented a complete paucity of information to support their contention that there is insufficient infrastructural capacity to serve the subject site. I note that in accordance with Section 9 of the Act, the burden of proof is on the owner. The Irish Water correspondence submitted in relation to application reference 16/527/Appeal Reference PL11.300322 relates to a scheme permitted over 2 years ago on a site in a different location. There is no evidence to suggest that there are any capacity constraints effecting the adjacent development permitted by Laois County Council under application reference 18/450. Full permission for this development was granted by Laois County Council in March 2019. No site specific information has been submitted in relation to the subject lands to demonstrate that there are infrastructural constraints that would preclude their development for housing.

7.1.14 I note that reference is made to a previous decision of the Board in relation to lands at Baneshane Midleton, Co. Cork (VS-0024). In that case, the Board determined that the site was no longer a vacant site due to a lack of certainty with regard to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced. I consider however, that there were materially different circumstances in that case where there were site specific infrastructural constraints including the need for capacity upgrades to the wastewater treatment plant in order to facilitate development. No evidence has been submitted to demonstrate that any site specific constraints apply to the subject lands.

7.1.15 I also note that the Planning Report prepared by the Planning Authority (18.12.2017) regarding the subject site and its entry to the VSR states that Irish Water has confirmed that there is capacity in the network to accommodate planned growth.

7.1.16 In conclusion, there is no evidence to suggest that adequate infrastructure is not available to serve the development of the site. The submission of correspondence from Irish Water dating back to May 2017 relating to lands at a different location does not in my view provide sufficient proof that capacity constraints exist that would inhibit the development of the subject site. Having regard to the planning history of the subject lands and adjoining lands and the fact that they are zoned and located within the existing urban area, I am satisfied that the site is served by adequate

public infrastructure necessary to enable housing to be provided and serviced.

Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing

7.1.17 There are no factors affecting the physical condition of the land which may affect the provision of housing.

## **Other Issues**

### **Change of Zoning**

7.1.19 The appellants note that when the draft Portlaoise LAP was published, it was proposed to rezone the subject lands for Community, Institutional and Educational Use. It is contended that for a substantial part of 2018 (March to October) it was intended to rezone the site to a land use that does not accord with the definition of 'residential land' as provided in the 2015 Act. It is stated that this resulted in the delay in bringing forward the subject land for residential development.

7.1.20 I note that the Portlaoise Local Area Plan was adopted on the 19<sup>th</sup> of November 2018 and the subject site is zoned 'Residential 2'. The Notice of Entry to the Vacant Sites Register was issued to the landowners on the 21<sup>st</sup> of February 2019. I am satisfied, therefore, that at the time the notice was issued, the subject site complied with the provisions of Section 3 of the Act being "*land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for use solely or primarily for residential purposes*".

7.1.21 I do not concur that the rezoning of the site under the draft LAP would have precluded the landowners from progressing an application on the subject site for residential purposes. The draft LAP does not form the statutory plan for the area until it is finally adopted and a planning application could have been progressed under the provisions of the Portlaoise Local Area Plan 2012-2018, under which the subject site was zoned 'Residential 2'.

## **8.0 Recommendation**

8.1. I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register

of site (VSL/PL/2016/57) that it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 21<sup>st</sup> of February 2019 shall be deemed to take effect from that date.

## 9.0 **Reasons and Considerations**

### 9.1 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 submitted by the appellant,

(c) The report of the Planning Inspector,

(e) that the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced,

(d) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

The Board is satisfied that the site was a vacant site for the relevant period.

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**Erika Casey**  
**Senior Planning Inspector**

**13<sup>th</sup> August 2019**