



An  
Bord  
Pleanála

## Inspector's Report ABP-309170-21

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Piercetown, Newbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority VSL Reg. Ref.</b>	NEW-01
<b>Site Owner</b>	1. Thomas Leeson. 2. Patrick Leeson.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	19 <sup>th</sup> August 2021
<b>Inspector</b>	Daire McDevitt

## **1.0 Introduction**

This appeal refers to a Section 7(3) Notice issued by Kildare County Council, stating their intention to enter the lands at Piercetown, Newbridge, Co. Kildare on to the Vacant Sites Register (VSR).

## **2.0 Site Location and Description**

The subject site is located to the north of the town centre area along the R416 (Station Road) which leads out from the main street to the railway station. The Department of Defence is located on the northern side of Station Road opposite the site. On the southern side of the Road there is a signalised junction which provides access into a gym complex, car park and a five storey apartment block located west of this centre.

The subject site has an area of c.1.922 hectares as part of a larger tract of land that was developed by the appellants. It is irregular in shape and is located opposite the Department of Defence accessed off Station Road (R416). The site boundary consist predominantly of hoarding, which is damaged in places. To the north of the site is a parcel of land which was the subject of an appeal under ABP Ref. PL.09.249033. The eastern portion of the site is bounded to the south by an access road which serves a mixed use development constructed by the appellants. Levels across the site are relatively flat. The rear of the site (western boundary) for the most part runs along the rear gardens of adjoining houses which form part of The Paddock housing development. Permission has been granted for a SHD on lands to the south of The Paddock. No activity or use of any sort was evident on site.

## **3.0 Statutory Context**

### **3.1 Urban Regeneration and Housing Act 2015 (as amended) .**

- 3.1.1 The Notice issued under Section 7(3) of the Act is dated the 18<sup>th</sup> December 2020 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.1.2 The Notices do not reference section 5(1)(a) of the Act. I note that the site is located on Residential Lands and section 5(1)(a) criteria was used in the assessment of the site.

3.1.3 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.

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.”

## **4.0 Development Plan Policy**

### **4.1 Kildare County Development Plan 2017-2023**

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

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.

4.1.3 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.

**4.2. Newbridge Local Area Plan 2013-2021** (Extension of Newbridge Local Area Plan 2013 - 2019 by resolution on the 19<sup>th</sup> December 2018 to 22<sup>nd</sup> December 2021 (inclusive)).

The site is zoned Objective **C - New Residential** with an objective '*to provide for new residential development*' It is identified as plot '**C5**'.

**SRO 8:** To seek the construction of the following new streets, as identified on Map 2 and to preserve the routes of these streets free from development: a) From Edward Street (L) to Military Road (M) (adjacent to Lidl). b) From Main Street (N) to Military Road/ Athgarvan Road(O) (through Bord na Mona) **c) (i) From the L7036 Morristownbiller Road (H) to the R416 Station Road at the entrance junction to the Department of Defence (1), through the lands zoned C4 & CS, utilising the existing section of street already constructed.** (ii) From the L7036 Morristownbiller Road at The Meadows at Cornelscourt (J) to the new street proposed under SRO 8 **(c) (i) above (K), through the lands zoned C4, utilising the existing sections of street already constructed.** These link streets (i & ii) will ensure that movement to/from the Station is maximised either as part of existing permitted developments or as part of any revised/future development(s). The design of these transport links shall be in accordance with the Design Manual for Urban Roads and Streets (DMURS).

## 5.0 Planning History

### On the Site:

#### **Applications by Patrick and Thomas Leeson:**

**PA Reg. Ref 20/1261** refers to a March 2021 grant of permission for 20 residential units (10 no. ground floor apartments and 10 no. duplex in 2 no. 3 storey blocks, completion of access road, surface parking, drainage, landscaping and all association site works.

**PA Reg Ref. 18/1491** refers to a 2019 grant of permission for 12. No. townhouses. Connection to roads and services as permitted under PA Reg. Ref. 18/207, bin store, car parking, landscaping and all associated site development works.

**PA Reg Ref. 18/207** refers to a 2018 grant of permission for 96 apartments in 2 no. 4 storey apartment blocks, access roads, surface parking, drainage, landscaping and all associated site development works,

**16/1266** refers to a 2017 grant of permission for the phased completion of the previously approved residential development approved under PA Reg. Ref. no. 05/222. The development consists of 24 no. apartments in 1 no. 4 storey block, access roads, surface parking.

**07/2085** refers to a 2008 grant of permission for a FAS Training Centre (c. 654sq.m) to ground and first floor of a 3 storey building, previously a community student centre granted under PA Reg. Ref. 05/222.

**05/222** refers to a 2007 grant of permission for the demolition of 2 no. exist houses and construction of mixed use development of 216 no. apartments in 7 no. 2. 3 & 4 storey blocks over basement car parking, 5 no. retail units etc.

### **Vacant Site (VS-005)**

Kildare County Council issued notices to both Mr Patrick Leeson and Mr Thomas Leeson on the 15<sup>th</sup> June 2018 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 for 'Residential' purposes in the Newbridge LAP 2013-2019.
- It is in an area where there is a need for housing
- The site is suitable for the provision of 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.

### **Lands to the north of the site:**

**PA Reg. Ref 19/1251** refers to a 2020 grant of permission to Andrew Cross for a three storey neighbourhood development centre consisting of a) 1 no. convenience store with ancillary off-licence use complete with coffee shop, delicatessen, toilets

and associated works. Fuel filling facilities to the rear of building, forecourt area, 3 no. 40,000 litre underground fuel tanks, electric charging points, canopy, pump islands, signage, service area and all associated site development works all at ground floor level. b) 1 no. retail shop unit at ground floor level, c) 2 no. takeaway units at first floor level, d) 1 no. medical suite at first floor level, e) 3 no. medical suites at second floor level. f) car parking, boundary treatments, new site entrance/exit, landscaping and all associated site development works (overall site).

**PA Reg . Ref 16/114 (ABP Ref. PL.09.249033)** refers to a 2018 decision to refuse Thomas Patrick Leeson for a two storey commercial development consisting of petrol station and drive through take-away and associated works.

**PA Reg . Ref 16/379** refers to a 2016 application by Brendan O'Brien for an EOT relating to 11/285.

**PA/ Reg. Ref 11/285** refers to a 2011 grant of permission to Brenda O'Brien for a 2 storey commercial development consisting of petrol service station and forecourt/retail, drive-thru restaurant, 2 no restaurant uses, entrance, parking, boundary treatment etc.

### **Lands to the southwest:**

**ABP Ref. 301818-18** refers to Strategic Housing Development Application lodged by Stennock Ltd for 281 no. residential units, creche and associated works. Permission granted in September 2018.

## **6.0 Planning Authority Decision**

### **6.1 Register of Vacant Sites Report**

A document titled 'Register of Vacant Sites Sheet Survey' include photographs with a date stamp of 03/03/20. The document itself is however not dated. Following this a Section 7(1) Notice issued on the 8<sup>th</sup> October 2020.

Report dated 11/11/20 refers to 'Consideration of Submissions in response to section 7(1) Notice'. This report refers to memo dated 12/06/18 recommending

inclusion on VSR and subsequent site visit on the 03/03/20 as proof of 12 month minimum vacancy.

A recommendation was made by the Executive Planner on 11<sup>th</sup> November 2020 stating that the site was assessed in accordance with the criteria listed under s. 5, 6 and 15 of the Urban Regeneration and Housing Act 2015 as per the 'Register of Vacant Sites Survey Sheet' dated 03/03/2020. It was concluded that the site is on lands zoned residential, is in an area where there is a need for housing, it is suitable for housing provision, is vacant and detracts from the visual amenity of the area and a notice under section 7(3) should be issued to the owners. Section 7(3) notice was issued on 18<sup>th</sup> December 2020.

## **6.2 Planning Authority Notice**

Kildare County Council issued Notices to both Mr Patrick Leeson and Mr Thomas Leeson on the 8<sup>th</sup> October 2020 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 for 'Residential' purposes in the Newbridge LAP 2013-2019 (as extended).
- It is in an area where there is a need for housing
- The site is suitable for the provision of 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 each appellant under section 7(3) of the 2015 Act on 18<sup>th</sup> December 2020 informing them that the site had been entered on the Vacant Sites Register.

## **7.0 The Appeal**

7.1 The site is co-owned by Mr Patrick Leeson of Ballinafagh, Prosperous, Naas, Co. Kildare and Mr Thomas Leeson of Ballintine, Kilmeague, Naas, Co. Kildare. The



landowners have submitted appeals to the Board, against the decision of Kildare County Council to enter the subject site on the Register. The grounds of each appeal can be summarised as follows:

## **7.2 Grounds of Appeal (Mr Patrick Leeson of Ballinafagh, Prosperous, Naas, Co. Kildare)**

### Failure to give reasons:

- The appellant states that the Planning Authority in determining that the site constitutes a vacant site has failed to properly assess that the site fulfils the criteria set out under Section 5 of the Act
- The Planning Authority failed to give proper reasons for the conclusions reached. It effectively stated a number of conclusions which are unsupported by reasons.
- No reference is made to the criteria set out under section 6(4) or any assessment carried out thereunder having regard to the four criteria referred to.
- The appellant refers to *Navratil v An Bord Pleanála* [2020] IEHC 292.

### Site is vacant/idle:

- The appellant submits that the lands or structures in the area are not in a ruinous or neglected condition and there is no prevalence of anti-social behaviour in the area.
- The Planning Authority have omitted reference to the extant development on the appellant's landholding and has failed to acknowledge that development has been carried out to date. On foot of PA Reg. Ref 05/222.
- There has been no appreciable reduction in habitable houses or people living in the area.

### Site not Viable:

- Planning Permission under PA. Reg. Ref for 216 apartments and commercial development. 24 apartments, gym and other ancillary development was carried out prior to the recession. Subsequently the appellant sought

permission for 95 apartments and 12 houses under various permissions, including Reg. Ref. 18/207.

- The construction of a large scheme of apartments in Newbridge requiring significant investment and support of a lending institution is not viable or sustainable.
- The appellant spent c.3 years obtaining planning permission for a neighbourhood centre (PA Reg. Ref. 20/1261) granted permission on the 8<sup>th</sup> December 2020.
- Current application (on further information) under PA Reg. Ref. 20/1261) for change from apartment blocks to own door duplex units.
- There is planning permission for 12 no. houses on the site, however significant investment in infrastructure would be required to access these units and those units, which are isolated in the western corner of the site, are not therefore financially viable on their own in the absence of the larger development.

Condition No. 7 of Reg. Ref. 18/207:

*The developer shall deliver the full extent of that part of the Newbridge Local Area Plan 2013-2019 roads objective SRO 8(c)(i) located within the curtilage of the site prior to any occupation of the proposed apartments to ensure a seamless tie-in connection with the link road on lands immediately adjacent and to the south of the subject site.*

*Reason: In the interest of proper planning and sustainable development.*

- The appellant notes that the condition requires that the appellant as the developer construct a significant road which provides access and egress for the lands located south of the appellants lands and located outside of the appellant's control or ownership.
- The Planning Authority is wrong to conclude that the subject site is served by public infrastructure within the meaning of section 48 of the Planning and Development Act 2000 which includes c) the provision of roads, car parks, car parking places, surface water and flood relief work, and ancillary infrastructure. Reference to Navratil legal challenge and Part 8 process.

- The appellant has stated that he has liaised with Irish Water and has been advised that the site cannot be served by foul sewerage until such time as the Newbridge Interceptor Sewer and other relevant parts of the Upper Liffey Valley Sewerage Scheme have been fully completed and commissioned. As such the appellant maintains that the subject site is not served adequately, at this time, by public services, within the meaning of section 48 of the Planning and Development Act (as amended).

The appeal includes the following documentation:

- Copy of Notice of entry onto the Vacant Sites Register.
- Supporting letter from Kelly Hudson Auctioneers.
- Supporting letter from Keith Traynor Consulting Limited Accountant.

### **7.3 Grounds of Appeal (Mr Thomas Leeson of Ballintine, Kilmeague, Naas, Co. Kildare)**

The grounds of appeal and documentation submitted with this appeal mirror that submitted with the appeal lodged by Mr Patrick Leeson summarised in section 6.2 above. I do not propose to repeat the information in this section and refer the Board to the grounds of appeal set out in section 7.2 relating to:

- Failure to give reasons.
- The site is not site is vacant/idle.
- The development of the site is not viable.
- The subject site is not served adequately, at this time, by public services, within the meaning of section 48 of the Planning and Development Act (as amended).

The appeal includes the following documentation:

- Copy of Notice of entry onto the Vacant Sites Register.
- Supporting letter from Kelly Hudson Auctioneers.
- Supporting letter from Keith Traynor Consulting Limited Accountant.

## **7.4 Planning Authority Response**

A response was received on the 22<sup>nd</sup> February 2021. This included: Memo from A/Senior Planner (15<sup>th</sup> February 2021) Housing Need Assessment (dated 08/09/2020), Suitability Assessment Report (site survey dated 03/03/2020), Section 7(1) Notice (dated 08/10/2020), Recommendation for Inclusion Report 'consideration of submissions received 11/11/2020' and copy of up to date Vacant Site Register.

The submission makes reference to reports dated 22/08/18, 03/03/20 and 11/11/20, in which all criteria contained in the Urban Regeneration and Housing Act 2015 (as amended) were assessed. Reference to photographs taken on the 03/03/20. The site is zoned for 'Residential' purposes in the Newbridge LAP 2013-2019 (as extended). It is in an area where there is a need for housing. The site is suitable for the provision of housing. The site or the majority of the site is vacant or idle.

The submission refers to an application lodged by the appellant's under Ref. 20/1261 and in particular the 'Engineering Drainage Report' submitted with the application which refers to the site served by a dedicated foul sewer system, An extract from the Water Services report is also included as Appendix 1 of the PA Response, this notes that the site has been serviced for water and wastewater for the proceeding 12 months.

The following documentation was submitted with the Response:

- Housing Need Assessment (08/09/2020)
- Suitability Assessment Report (03/03/2020)
- Recommendation for Inclusion Report (11/11/20)

## **7.5 Further Responses**

The appellants made a joint response to An Bord Pleanála (received on the 29<sup>th</sup> March 2021). This reiterates a number of points raised in the grounds of appeal pertaining to procedural matters and availability of documentation for review.

Additional comments regarding the Planning Authority Memorandum of the 15<sup>th</sup> February 2021 are summarised as follows:

- Notices fail to address the relevant considerations of the Act.
- Reference to Reports/memorandums is not sufficient and do not alleviate the Planning Authority of the need to clearly set out in the notices the reasons and considerations for the decision reached.
- The memorandum refers to the site being deemed vacant or idle to be based solely on a length of hoarding. The appellants do not agree that the hoarding is or was in a 'neglected condition'.
- The Planning Authority have failed to demonstrate how the site can be considered to come within the ambit of section 6(1). Reference to PL.27.302251 (Wicklow).
- It remains the appellants position that planning permission cannot be obtained for development which is viable.
- Argue the Act should be read in a manner consistent with the Constitution.
- There is no obligation on an applicant to appeal a condition of planning permission and there is no reason, given that the Planning Authority deemed the construction of the road (with additional capacity and provision to serve adjoining lands) to be necessary and in accordance with the proper planning and sustainable development of an area.
- The development of the lands is predicated upon the development of a significant distributor road to serve both the appellants' land and significant lands adjoining as part of the road network for the area giving access to the railway station.
- Reference to services and access and availability of same is a matter for Irish Water and not Kildare County Council. The information provided, including engineering services report prepared to support a planning application, is not conclusive of the availability of water services which requires a connection offer from Irish Water.

## 8.0 Assessment

### 8.1 Introduction

Kildare County Council issued a Notice under section 7(3) of the Urban Regeneration and Housing Act 2015 (as amended) on the 18<sup>th</sup> December 2020. The notices issued by the council were not explicit in stating if the site was regarded as residential land under section 5(1)(a), as opposed to regeneration land under section 5(1)(b). The Section 7(1) Notice dated 8<sup>th</sup> October 2020 notes that the site is zoned for 'residential' purposes in the Newbridge Local Area Plan 2013-2019 (as extended). It is a reasonable assumption given the zoning, its location and state of the site and all parties' submissions 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 18<sup>th</sup> December 2020, so the period to be considered when determining whether the site is vacant and should be on the register is from 19<sup>h</sup> December 2019 to that date.

I note the reference to the Newbridge Local Area Plan. My assessment has regard to the Urban Regeneration and Housing Act 2015 (as amended) and whether the criteria set out in section 5(1)(a) applied during that period is therefore examined below.

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.

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”.

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.

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.

An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered on the Kildare County Council VSR on the 18<sup>h</sup> December 2020.

The subject site is located in an area zoned New Residential - To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered, as detailed in the current Newbridge LAP. Section 4.4 of the plan states that for the purpose of the vacant sites levy all residential zonings will be considered for the purpose of the act in accordance with the County Development Plan.

Firstly, the overarching tests for all sites needs to be met

- The 'site' must exceed 0.05hectares in size. The appeal site has an area of 1.922ha therefore complies with this requirement.
- The site or the majority of the site, must have been vacant for the durations of the 12 months preceding the date of entry on the Register. This matter is addressed further below.



- No regard is to be had to any unauthorised development or use. This has not been raised by either party and is not considered further.

I note reference to adverse effects, this applies to Regeneration lands and not residential lands as is the case of this appeal.

My assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

## **8.2 Notices:**

The appellants have stated that the section 7(1) notice of intention to enter the site on to register did not give adequate reasons why the site should be considered for inclusion. The planning authority note that there is sufficient information contained in the planning reports that accompany the site analysis. I have examined the section 7(1) notices and I am satisfied that the reasons why the site is considered for inclusion on the Vacant Sites Register are listed in the notices. A Planning Report was also prepared with respect the section 7(1) and 7(3) notices. I am satisfied that there is no ambiguity as to the rationale for the entry of the site onto the register and that the PA have complied with their statutory obligations under the Act.

## **8.3 Vacant or Idle**

As noted above 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 18<sup>th</sup> December 2020, so the period to be considered when determining whether the site is vacant and should be on the register is from 19<sup>th</sup> December 2019 to that date. Whether the criteria set out in section 5(1)(a) applied during that period is examined in later sections of this report.

The report of the Executive Planner of the council dated 11<sup>th</sup> November 2020 stated that the site was vacant for required 12 months and recommended that the site be entered onto the register. This is consistent with the state of the site observed at the time of inspection.

I would refer the Board to section 9(2) of the 2015 Act and while I note a detailed submission has been received on behalf of the appellant, no evidence has been submitted that the site was not vacant site for the duration of the 12 months concerned.

#### **8.4 Need for Housing**

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.

Section 6 (4) sets out the criteria to determine whether or not there was a need for housing in an area within the Planning Authority's function area.

The appellant has in simple terms questioned the need for apartments in the area, they have queried the viability of the permitted units types (i.e apartments) and note the demand is for houses in the area. I draw the Boards attention to a 2020 grant permission for 20 units on the southwestern corner of the site which is for a mix of apartments and duplex units. The planning authority have addressed the issue of housing need through the core strategy of the County Development Plan and a housing needs assessment carried out for Newbridge dated 8<sup>th</sup> September 2020. The planning authority's approach to identifying housing need for the area is evidence based and accords with the requirements set out in section 6(4) of the 2015 Act. I am satisfied that there is a housing need for the area, the lands have been identified to support the growth of Newbridge and zoned for residential purposes in the LAP.

A Vacant Sites-Newbridge Town Housing Need Assessment Report dated 8<sup>th</sup> September 2020 was carried out by the Planning Authority and submitted with their submission on this appeal. This following points are noted:

- The core strategy estimates a population increase in County Kildare of 16,863 persons between the years 2020-2023 which equates to an additional 6,023 households in the county.
- It is estimated that there will be a need for 699 housing units over the period 2020-2023 which has an equivalent additional population of 1,957 for the same period.

- As of June 2020 it was noted that County Kildare had one of the highest average asking prices (€257,169) for housing in the State. As of Q1 2020, County Kildare had one of the highest average rental prices (€1,365 per month) in the state.
- The number of households that have specified Newbridge as an area of choice for the receipt of social housing support in September 2020 was 2,345. It has been stated that it was not possible to source a comparable statistic for Newbridge for 1<sup>st</sup> March 2017, but it is noted that the Countywide figure for this date was 5,103.
- The following data was available for the 8<sup>th</sup> September 2020: the number of habitable houses available for purchase in the area is c.158. The number of habitable houses available to rent in the area was stated to be c.12.
- The number of vacant residential units in Newbridge in 2016 was 8,260 (based on 2106 CSO), therefore it was concluded that the number of habitable houses available to purchase or rent was c. 2% which was less than 5% of the total number of houses in the area.

The report concluded that having regard to:

1. The Kildare County Council Housing Strategy and Core Strategy.
2. House prices and the cost of renting in the Newbridge area.
3. The number of households qualified for social housing support in the Newbridge area, and
4. The number of habitable households available to rent or purchase in the area.

It is considered that there is a demonstrable need for housing in the Newbridge area.

I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Newbridge. I am satisfied that the PA have adequately demonstrated housing need in the area.

## 8.5 Suitable for Housing

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.

The appellant raised questions in relation to whether the site is suitable for housing given the viability of the unit types permitted and the requirement to deliver a distributor road through the lands. The viability of unit types is not a test included in section 6(5), the site is zoned residential and there is a need for housing in the area.

### **8.5.1 Core Strategy**

The subject site is zoned for residential development under the Newbridge Local Area Plan 2013-2019 (extended to 2023). The Kildare County Development Plan sets out the core strategy for the county and details that it is anticipated that the population of Newbridge will increase to by c. 1957 persons by 2023. It is stated that there will be a need for an additional 699 new residential units to be delivered in the town by 2023.

I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Newbridge. I am satisfied that the Planning Authority have adequately demonstrated housing need in the area.

### **8.5.2 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**

The appellants have stated that they have liaised with Irish Water and have been advised that the site cannot be served by foul sewerage until such a time as the Newbridge Interceptor Sewer and other relevant parts of the upper Liffey Sewerage Scheme have been fully completed and commissioned. I see no conditions attached to PA Reg. Ref 18/207 or the more recent PA Reg. Ref. 20/1261 that restrict or delay development of the site due to infrastructural deficiencies. I also note that under planning authority reference ABP Ref. 301818-18 permission was granted for a SHD application of 281 units with no condition attached restricting occupancy. There are

two current SHD applications (ABP 310912 and 311040) for developments at Ballymann, decisions are due in November 2021. I note a 2019 decision to refuse permission for a SHD at Ballymann (ABP ref. 302922) was refused on the ground of 1) design strategy and 2) surface water management and flood risk. Irish water in their submission on 302922 confirmed that connections to the Irish Water network could be facilitated.

Consequently, I am satisfied that the site is and was suitable for housing in full accordance with the criteria set out by section 6(5) of the 2015 Act.

In terms of the need for housing in the area and the suitability of the site for housing I am satisfied that all the tests required by section 6(4) and (5) are met. The site is and has been for some time suitable for housing and satisfies a housing need recognised and adequately described by the planning authority.

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 SRO8 of the local area plan for a 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 road across the site, as was achieved in the layout for the housing granted permission under 18/207 on the appeal site.

The appellant contends that the development of the site has been impeded by the requirement under condition no. 7 of 18/207 to deliver a road through the site to access lands outside the appellants' ownership. I draw the Boards attention to condition no. 11 attached to ABP Ref. No. 301818 relating to a permitted SHD on lands to the Southwest. This condition relates to the provision of a link street to comply with Newbridge LAP roads objective SRO 8 c) (i) from its intersection with the R416 to the Morristownbiller Road.

I am satisfied that the site is served by adequate public roads infrastructure and facilities to enable housing on the site to be provided and serviced and was so between 19<sup>th</sup> December 2019 and 18<sup>th</sup> December 2020.

The appellants have argued that it is not viable to develop the site given the requirements pertaining to the delivery of a distributor road. Whilst these technical requirements are noted, I do not consider that they would be an impediment to the future development of the lands for residential development.

Whilst there are extant permissions on the site, construction activity has not commenced. From the site visit, it is evident that no development has commenced on the site. In the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy.” The appellant’s case that the site is not vacant or idle because of the intention to implement a planning permission cannot be considered as meaningful use for the site so as to remove it from the register.

Constraints on services have also been highlighted. I note this was an issue under previous Section 9 appeals in Newbridge in 2019. The Planning Authority have raised no concerns regarding wastewater treatment capacity in their current submission. Irish Water have not been consulted during the VSL process. I further note a 2018 grant of permission for a SHD on lands to the southwest of the site. I note current SHD applications (310912 and 311040) due for decision in November 2021 respectively include submission from Irish Water which refer to wastewater connections being completed on completion of upgrade works relating to the Upper Liffey Valley Contracts 2A and 2B. These projects are currently in progress and have an expected date of completion of 2022 (subject to change).

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

No factors have been identified that would affect the physical condition of the land which might affect the provision of housing.

## **9.0 Conclusion**

I am satisfied that the site meets the definition of vacant or idle contained in section 5 (1)(a)(i),(ii) and (iii) of the Urban Regeneration and Housing Act 2015 as amended by section 63 of the Planning and Development Amendment Act 2018. And the

criteria set out in section 6(4) to determine whether or not there was a need for housing in an area within the Planning Authority's function area. Having regard to the tests contained in section 6(5) of the Act to determine the suitability of a site for housing having regard to (a) the core strategy and (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.

## **10.0 Recommendation**

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm the Notice stating that the site at Piercetown, Newbridge, Co Kildare. was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18<sup>th</sup> December 2020 shall remain.

## **11.0 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 submitted by the appellants,
- (c) The report of the Planning Inspector,
- (d) The need for housing in the area,
- (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.

the Board considers that it is appropriate that a notice be issued to the planning authority who shall confirm the entry on the Vacant Sites Register.

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Daire McDevitt  
Senior Planning Inspector

26<sup>th</sup> October 2021