



An
Bord
Pleanála

Inspector's Report ABP-309200-21

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Former Magee Barracks site, Kildare town, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority VSL Reg. Ref.	KILD-07
Site Owner	Columbia Estates Management Ltd.
Planning Authority Decision	Place on Register.
Date of Site Visit	19 th August 2021
Inspector	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 the former Magee Barracks site, Kildare town, Co. Kildare, Co. Kildare on to the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

The appeal site is c.19 hectares and forms part of a larger plot originally associated with the former Magee Barracks. The original landholding has since been the subject of a number of planning applications and developments. This includes a plot to the south west associated with LIDL and a plot to south east along Hospital Road which has permission for a Cancer Care Centre.

The appeal site is accessed from Hospital Street (R445) and backs onto a number of existing housing estates, including: Magee Terrace, Campion Crescent, Ruanbeg, Rowanville and a primary school. There are limited views of the site from the Hospital Road. However, there are view into the site from the LIDL car park, Ruanbeg Estate and the school site can be found at higher levels to the north and its access road.

There are a remnants of a number of buildings, which are in a ruinous condition, associated with the former use of the site as a military barracks and mounds of demolition material from buildings that have been demolished. There are large number of mature trees and hedging across the site. The parade grounds, of which there are two, are surfaced with tarmac and the northern portion of the appeal site is greenfield with sheep observed at the time of inspection.

3.0 Statutory Context

Urban Regeneration and Housing Act 2015 (as amended) .

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

The Notice does not reference section 5(1)(b) of the Act. I note that the site is located on Regeneration Lands and section 5(1)(b) criteria was used in the assessment of the site.

4.0 Development Plan Policy

4.1 Kildare County Development Plan 2017-2023

Kildare is designated as a Secondary Growth Centre and a Moderate Sustainable Growth Town with a surplus capacity for residential development.

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.

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.

Table 3.4 sets out the Development Capacity of County Kildare and Kildare Town shows a capacity surplus of 2,027 units over 134 hectares of zoned land and highlights Magee Barracks as an area with development capacity.

4.2. Kildare Town Local Area Plan 2012-2018

The site is located on lands zoned **Objective Z - 'Regeneration of Magee Barracks'** where it is an objective "to facilitate a wide range of uses to allow for the flexibility in the regeneration of the former Magee Barracks site in a sustainable manner".

This zoning allows for the development of the site for a mix of employment, educational, community and residential uses in accordance with the design brief set out in section 7.6 of this plan.

The following key objectives for the regeneration of the site should be met:

- The sustainable regeneration of the site with uses and layout which integrate this sites edge of centre location with the town centre
- The provision of link roads in accordance with Section 7.7 and Map 8.2 of this Plan.
- The protection and reuse of buildings and structures of historical importance listed in Table 12 of this plan.
- The protection of residential amenity of existing residential areas adjoining the site.
- The provision of significant elements of public open space, including the provision of a neighbourhood park.

The LAP outlines a number of policies and objectives that are specific to the regeneration of the Magee Barracks site, as follows: Development Strategy 1. The Regeneration of Magee Barracks.

Development Strategy 7. Transportation Infrastructure and Development of Linkages - (vii) Develop an avenue at Magee Barracks connecting the Dublin Road and Melitta Road. (viii) Provide for connections between Magee Barracks and Melitta Road, Ruanbeg and Coolaghknock.

Table 10- Phase 1 sites for Residential Development

- Magee Barracks with a site area of 23.1ha and as a mixed use development can accommodate c. 161 units.

Table 11- Indicative Residential Densities

- Town centre and brownfield sites are site specific

Section 7.3.1 Economic development

(iii) Encouraging the flexible re-use of Magee Barracks through the provision of a mix of employment, education, residential and community uses, high quality public realm and open spaces and a built environment that reflects both the military history of the site and the existing urban fabric of the town.

Section 7.3.1- Tourism

Policy TO2- Refers to the use of signage maps to gateways throughout the town such as the proposed civic space at Magee Barracks.

Section 7.6.2 provides a detailed Design Brief for Magee Barracks and comprises; drawings and guidance in relation to accessibility, permeability, enterprise/employment, amenity, site context and integration with the surrounding area.

Objective R 8: To establish a new neighbourhood centre within the Magee Barracks regeneration site with a suitable range of uses to meet the daily needs of residents/employees of the emerging new neighbourhood and the existing surrounding residential area. This neighbourhood centre shall be of a size and function that ensures it complements rather than detracts or displaces retail or other activities from the town centre. The neighbourhood centre may be anchored by a supermarket (net retail floorspace of up to 1,500m²) and have a limited range of non retail services, civic, community and commercial and leisure floorspace.

Objective RR 1: To encourage and facilitate the appropriate and sustainable re-use and regeneration of the Magee Barracks site for uses that are appropriate to its strategic location within the town creating a built environment that reflects both the military history of the site and the existing urban fabric.

Kildare Town Local Area Plan 2019- 2025

The Pre-draft Public Consultation Issues Paper for the Kildare Town Local Area Plan 2019 - 2025 went on display from 21st August - 17th September 2018.

The Kildare Town Local Area Plan 2019 -2025 was then paused due to the Variation of the County Development Plan 2017 -2023.

As per KCC website “It is envisaged that the new Draft Kildare Town LAP will go on public display in Q.4 of 2021/ 2022. Until a new plan has been adopted to replace the 2012 - 2018 LAP, any planning decisions will be based off of the 2012 - 2018 plan.”

5.0 Planning History

On the southern portion of the site:

ABP Ref. 301371-20 refers to a 2018 decision to refuse permission for the Demolition of 16 no. existing buildings, construction of 264 no. residential units,

neighbourhood centre, 3 no. retail units, childcare facility and all associated site works.

ABP Ref. 305007-20 refers to a 2019 grant of permission for 375 no. residential units (185 no. houses and 190 no. apartments), crèche and associated site works.

Vacant Site (VS-119) This refers to a 2018 Vacant Site file. Section 7(1) notices served on Columbia Estates Management (IE) Limited for a site with an area of c. 22.7 hectares. Did not proceed to section 7(3) notices due to an error in the section 7(1) notice which referred to the Kildare Town Plan 2019-2025 instead of the Kildare Town Local Area Plan 2012-2018.

Other development on lands originally part of the former Magee Barracks site):

PA Reg. Ref. 18/273 (ABP 304093-19 withdrawn) refers to a 2019 grant of permission to Lidl Ireland GmbH for a supermarket/discount foodstore on lands within overall Magee barracks site to the south west of the current appeal site.

PA Reg. Ref. 18/149 (ABP 303141-18) refers to a 2019 grant of permission to Lonadale Ltd for a Cancer Treatment Clinic. (first party appeal regarding conditions) located to the south east of the current appeal site.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report

Document titled 'Register of Vacant Sites Sheet Survey' refers to Site Reference VS - 119 and includes photographs with a date stamp of 03/06/20 and 18/06/20 and refers to site inspection carried out 23/10/2018. The document itself is however not dated. This is signed by the Assistant Planner. Following this a Section 7(1) Notice issued on the 4th September 2020.

Report dated 1st October 2020 signed by the Assistant Planner 'Consideration of Submissions in response to section 7(1) Notice'. This report refers to site inspection carried out in June 2020 and October 2018 which determined the site was vacant. as proof of 12 month vacancy.

6.2 Planning Authority Notice

A section 7(3) Notice issued on the 18th December 2020 advising the owner that their site had been placed on the register, accompanied by a covering letter, site map and folio details. The Notice was sent to Columbia Estates Management Limited as the registered owner of the three plots of land that make up the overall site of 19.0 hectares

- 3.1.1. A section 7(1) Notice issued on the 16 June 2020, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map and folio details.

7.0 The Appeal

Appeal lodged by Columbia Estates Management (IE) Limited on the 15th January 2021 against the decision of Kildare County Council to enter the subject site on the Register.

The grounds of appeal states that notwithstanding the different ownership of 'the site' as defined in the Section 7(3) Notice that appeal has been prepared on behalf of Columbia Estates Management (IE) Limited and does not purport to be on behalf of the other landowner, Lonadale Limited.

7.1 Grounds of Appeal

The grounds of the appeal can be summarised as follows:

- 1) Failure of the Council to comply with the statutory provisions of section 7 of 'The Act'.
 - The notified 'site' in the townland of Kildare. Co. Kildare as identified in the map attached to the section 7(3) Notice and entered onto the Vacant Sites Register is not in the ownership of Columbia Estates Management (IE) Limited.
 - Columbia Estates Management (IE) Limited retained ownership of part of the site only, with the remainder of the landholding fronting onto Curragh

Road sold to Lonadale Limited in May 2017. A land ownership map has been prepared and submitted with the grounds of appeal.

- Columbia Estates Management (IE) Limited and Lonadale Limited are independent companies, separately registered and separately controlled.
- Lonadale Limited have not received written notice of the intent or proposal to place land on the Vacant Sites Register.
- The appellant notes that the notice received include lands over which they have no legal interest, that these lands have erroneously been included in 'the site' to which a market value has/will be determined.

There is no provision in legislation to amend or alter 'the site', once placed on the Vacant Sites Register.

- It is submitted that the site has been incorrectly entered on the Register contrary to the provision of section 6&7 of the Act. The Council has erred in law such that the decision is vitiated, in consequence, the decision is ultra vires, and/or unlawful, invalid and of no legal effect.

2) Erroneous determination by the Planning Authority that the site is 'vacant' or 'idle':

- 'idle' is not defined in the Act.
- The appellants acquired the site in 2016 from the Department of Defence.
- A SHD application was lodged with the Board in 2018 (ABP-301371-18) which was refused permission. Since 2018 active site management has been undertaken including a detailed programme of Invasive Species Management necessitating extensive site surveying and herbicide treatment. This continues to the time of appeal with a stage 3 Treatment Report submitted to the Environment Section of Kildare County Council in December 2020.
- SHD Application lodged in 2019 (ABP-305007-19) which was granted permission (375 dwelling, neighbourhood centre, retail units and childcare facility).

- The development of the site on foot of the 2019 permission was planned to commence in September 2020 but has been hindered and delayed by the Covid 19 pandemic and its associated restrictions and lockdowns.
- Since 2019, work has been ongoing on construction drawings and compliance matters, many of which required consultation with relevant sections of the Council prior to submission.
- In relation to the greenfield portion of the land (northern part of the site) which did not form part of the 2019 application, the site owner has entered into talks with the Department of Education who have indicated that they require such land for the provision of a secondary school in the town.
- The appellants present on the basis of the above that the site is not 'idle' and that the development of the site is dependent on the Council agreeing compliance with the 2019 conditions.

3) Erroneous determination that the site has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities in the area or has adverse effects on the character of the area.

Effect on Amenities:

- It is submitted that in order for a site to have an adverse effect on amenities it must in the first instance be in a ruinous or neglected state.

Ruinous Structures:

- The 'site' is in two halves. The southern portion was the subject of ABP 305007-19 and contains 17 no. structures which are identified for demolition and the present of ruinous structure on this part of the site is not disputed. The northern portion is greenfield and is used for agricultural purposes.
- Given the nature of 'the site' and its varied character it is submitted that the site as identified on the Vacant Sites Notice cannot be determined to be in a ruinous or neglected condition.

Anti-social behaviour:

- The appellants state that they have not been contacted in respect of any anti-social behaviour taking place in the area in the 12 months preceding the appeal.
- In October 2019 the services of RLH Limited were engaged to undertake a security review of the site and proposed measures to prevent trespass which have been implemented.

Housing & Population in the Area:

- There is no evidence in a reduction in the number of habitable houses, or the number of people living in the area.

Effects on existing public infrastructure and facilities:

- The land cannot be easily viewed from the public road. There are no direct views of the site which would/could impact on the amenities of the area or reduce the amenity provided by existing public infrastructure and facilities in the area.

Effect on Character of the Area:

- The notices issued by Kildare County Council alluded to section 5(1)(b)(2) but does not state how or why the character of the area is adversely affected

4) Other Matters:

The appellant has set out under this heading their thoughts on the levy that would apply if the site is not removed from the Vacant Sites Register.

The appeal is accompanied by the following documentation:

- Copy of the section 7(3) Notice with Map reference Folio KE66339F, Folio KE646 and Folio KE2094F (total site area of 19.0ha)
- Letter from Londale Limited outlining the extent of the lands in its ownership and that Londale Limited has not been notified by Kildare County Council of any intention to place land in their ownership on the Vacant Sites Register.

- Map showing the 'former Magee Barracks site' and the extent of lands in the ownership of Columbia Estates and that in the ownership of Lonadale Ltd.

7.2 Planning Authority Response

A response was received by An Bord Pleanála on the 16th February 2021 and is summarised as follows:

- 1) Failure of the Council to comply with the statutory provisions of section 7 of 'The Act'.
 - It is acknowledged that correspondence from 2018 from the appellant's agent stated that part of the lands had changed hands in 2017. However, no details of ownership of the portion of lands that are stated to have changed hands has been furnished.
 - The most up to date official information available on the PRAI website show that all lands remain in the name of Columbia Estates Management (IE) limited.
- 2) Erroneous determination by the Planning Authority that the site is 'vacant' or 'idle':
 - The Council note that none of the conditions attached to ABP 305007-19 relate to infrastructural deficiencies, therefore, provision of additional infrastructure is not required to facilitate the commencement of development.
 - The Act does not provide for the exclusion of a site from the register where conditions are to be agreed with a planning authority.
 - The work involved in bringing forward a development does not detract from the fact that the entire site outlined in the notice has performed no productive role for a period of more than 12 months from October 2018 to June 2020 when the site was surveyed. Therefore, it is clearly vacant and idle.

3) Erroneous determination that the site has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities in the area or has adverse effects on the character of the area.

- With reference to the three criteria set out in section 6(6) of the Act . The Planning Authority refers to the Board interpretation of this section to date and given the inclusion of 'or' there is no requirement to meet all three criteria.
- The Council acknowledge that agricultural use was noted on the northern portion of the site in 2020 but note that this was not the case in 2018.
- Littering and dumping was noted along parts of the northern and western boundaries. Illegal dumping was evidence that part of the site is in a neglected condition and has an adverse effect on existing amenities and on the character of the area.
- Inspection carried out in June 2020 observed illegal dumping and litter on site. This is regarded as evidence of anti-social behaviour.
- Reference to Garda call outs to the site in 2019, and in March and June of 2020.
- The Council considers that 2 of the tests in section 6(6) are met and that the site is in a ruinous or neglected condition and has an adverse effect on existing amenities and has been subject to anti-social behaviour and thus can be categorised as a vacant site as defined by section 5(1)(b).
- The site is visible from the Lidl carpark, school access road, and parts of Melitta Park, Magee Terrace and Ruanbeg.
- The character of the area has been adversely affected and the notices comply with the requirements of the Act.
- The Council does not oppose the appellant's contention that population and housing has increased in Kildare from census 2011 to 2016.

4) Other Matters:

- It is highlighted that once a site has been valued the landowner is entitled to appeal the valuation under section 13(1) of the Act

The Planning Authority conclude that given that the subject lands are:

- Zoned for regeneration purposes in the Kildare Local Area Plan 2012-2018.
- Have the benefit of planning permission capable of delivering 375 residential units.
- Located in an area where there is a clearly demonstrated demand for new residential units.

It is contended that, notwithstanding the condition of the subject lands, they should be included on the register of vacant sites to encourage their development in accordance with the provisions of the County Development Plan Core Strategy and the Kildare Local Area Plan.

7.3 Further Responses

Received from the appellants on the 16th March 2021. (letter is dated 17th March 2021) in response to the Planning Authority's submission. This broadly reiterates the grounds of appeal. Points of note include:

- Folio details showing the transfer of lands to Lonadale Limited on the 4th July 2017.
- IW connection agreements remain outstanding.

8.0 Assessment

8.1 Introduction

An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site 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 a vacant site 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 onto the Kildare County Council VSR on the 18th December 2020.

The notices issued by the council were not explicit that the site was regarded as regeneration land under section 5(1)(b), as opposed to residential land under section 5(1)(a). However this is a reasonable assumption given the location and state of the site and all parties' submissions are based on the criteria for a vacant site on regeneration land set out at section 5(1)(b). The council entered the site on the register on 18th December 2020, so the period to be considered when determining whether the site is vacant and should be on the register is from 19th December 2019 to that date.

Whether the criteria set out in section 5(1)(b) applied during that period is therefore examined in section 8.3, the issue of ownership is addressed in 8.2.

8.2 Procedural Matters

8.2.1 Land Ownership:

The appellants have set out that the Notices served on them include lands over which they have no legal interest, that these lands have erroneously been included in 'the site' to which a market value has/will be determined. There is no provision in legislation to amend or alter 'the site', once placed on the Vacant Sites Register. The appellants submit that the site has been incorrectly entered on the Register contrary to the provision of section 6&7 of the Act. The Council has erred in law such that the decision is vitiated, in consequence, the decision is ultra vires, and/or unlawful, invalid and of no legal effect.

I have reviewed the Notices served on the appellant and associated map and folio details. The site which was the subject of the section 7(3) Notice contains three folios (66339F, 646 and 2094F), all of which had Columbia Estates Management Ltd as the registered owner of the three parcels that make up the 19.0 site. The issue of landownership was not raised in the correspondence from the appellants agents (Arnold Leahy Architects) in response to the section 7(1) Notice dated 4th September 2020 or the section 7(3) Notice dated 18th December 2020.

Correspondence from Lonadale Limited (undated) included with the appeal documentation states that “Lonadale acquired the extent of land hatched in red on the OS map as ‘land owned by Lonadale’ from Columbia Estates Management (IE) Limited by deed of transfer on the 26th May 2017”. I note that Lonadale have not lodged an appeal on their own behalf.

The purposes of the Notices are to inform owners that the relevant lands are to be entered onto the Vacant Sites Register. Based on available information I note that the two companies share an address and a director.

Kildare County Council have stated that they served Notices on the registered owners of the site marked in the maps included with the Notices in December 2020. Land transfers can be long and tedious and can result in lags in up to date information being available on the PRAI website. I note that documentation received by An Bord Pleanála on the 16th March 2021 includes folio details showing the transfer of lands to Lonadale Limited on the 4th July 2017.

I note the cross over between the companies, notwithstanding the appellants assertion that there is no connection between them. Notwithstanding I consider that the Council carried out due diligence and served the notice on the registered as owners according to the Property Registration Authority of Ireland at the time.

8.3 Vacant or Idle

Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

- (i) the site, or the majority of the site, is vacant or idle, and*
- (ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.*

The site must meet both tests and I will address each in turn.

8.3.1 Vacant or Idle:

The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 states:

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date.

In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, the appellants outline in significant detail their contention that the site was not vacant or idle for the 12 months preceding the site being placed on the Register having regard to the works undertaken to ready the site for development.

In terms of part (i), that the site, or the majority of the site, is vacant or idle, I note the current and long term condition of the site. On the day of my site visit, I observed that the site was performing no productive role and was clearly vacant and idle.

The Planning Authority have in their submission referenced VS-119 and inspections carried out on the 23rd October 2018 as evidence that the site has been vacant for 12 months. The Report dated 1st October 2020 signed by the Assistant Planner contains a recommendation that stated that 'a) the subject site was vacant for at least 12 months prior to the issuing of section 7(1) Notice and b) the subject site continues to be a vacant site.'

I would refer the Board to section 9(2) of the 2015 Act which places the burden of showing that the site was not vacant on the owner of the site and while I note a detailed submission has been received on behalf of the appellant it contains no evidence that the site was not vacant or idle for the duration of the 12 months concerned.

I also note that the appellants make detailed reference to the fact that there is an extant planning permission for a Strategic Housing Development, 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.

8.3.2 Adverse Effects:

In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii) that being that the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

This test is considered by reference to Section 6(6) of the Act which states that 'a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—

- (a) land or structures in the area were, or are, in a ruinous or neglected condition,
- (b) anti-social behaviour was or is taking place in the area, or
- (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.

The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. This is not disputed by the appellants in relation to the southern portion of the land in their ownership. However, they maintain that that northern portion is not in a ruinous state and is greenfield in agricultural use. I have inspected the site and I note that the overall former Magees barracks site (regardless of which portion is considered) is in a neglected condition. There is dereliction and structures in ruinous condition, extensive stock piles of demolition material. in addition to extensive dumping noted in part on site. I did observe some sheep on the northern portion. I cannot however determine how long these have been on site as the Planning Authority note there were not present on the 23rd October 2018 but present in June 2020. The lands are not part of an agricultural holding. However, the overall site, I would agree is in a neglected condition and would comply with Section 6(6)(a).

The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I would note that the planning authority states that at the time of the inspection there is evidence of dumping and litter which, in its view, demonstrates that anti-social behaviour was taking place. While there is some evidence of dumping the matter of anti-social behaviour is difficult to definitively assert. I would note that the site at the time of my inspection appeared well secured and security personnel were present on site. I acknowledge that antisocial behaviour and incidents of arson has been reported over the years. However no evidence has been presented that this has taken place since security measures were put in place.

Littering and dumping was noted along parts of the northern and western boundaries. The Council concluded that Illegal dumping was evidence that part of the site is in a neglected condition and has an adverse effect on existing amenities and on the character of the area.

With regard to Section 6(c) of the Act, The Council does not oppose the appellant's contention that population and housing has increased in Kildare from census 2011 to 2016, therefore I do not intend to address the matter.

The Council considers that two of the tests in section 6(6) are met, a) and b), and that the site is in a ruinous or neglected condition and has an adverse effect on existing amenities and has been subject to anti-social behaviour and thus can be categorised as a vacant site as defined by section 5(1)(b).

Based on the information to hand and observations at the time of inspection for this appeal I am satisfied that the site meets the tests set out in section 6(6)(a) and 6(6)(b).

9.0 Conclusion

I am satisfied that the site meets the definition of a vacant site under Section 5(1)(b) and complies with the test outlined in Section 5(1)(b)(ii), such as the site being vacant or idle has adverse effects on existing amenities or character of an area. This test is considered by reference to Section 6(6) of the Act which states that ‘a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether— (a) land or structures in the area were, or are, in a ruinous or neglected condition, (b) anti-social behaviour was or is taking place in the area, or (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.

The Act includes commas and an ‘or’ between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that two of the tests in Section 6(6) are met and that site has adverse effects on the character of the area and thus can be categorised as a vacant site as defined by Section 5(1)(b). In this context, I am satisfied that there is evidence that antisocial behaviour had taken place on the site and that the neglected and ruinous condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the location of the lands in the Kildare town and its proximity to physical and social infrastructure.

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 entry of the site (KILD-07) comprising lands at the former Magee Barracks site, Kildare, Co Kildare was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18th December 2020 shall remain.

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 evidence that antisocial behaviour had or did occur on the site, the neglected condition of the site in the context of the surrounding area, and the majority of the site being vacant or idle,

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

Daire McDevitt
Senior Planning Inspector

28th October 2021