



An
Bord
Pleanála

Inspector's Report ABP-309247-21

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Townland of Kildare, Kildare, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority VSL Reg. Ref.	KILD-04
Site Owner	Patrick Conlon
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 townland of Kildare, 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 site with an area of c.0.3hectares is located to the north of Kildare town centre on the outskirts of the town. The site is located to east of Rathbride Road and north of the railway line. The appeal site is rectangular in shape. The site forms part of a larger plot that is currently in the process of being developed. Boundaries between plots have been removed since Kildare County Council issues its Section 7(3) Notices for this area. To the south and east is a field which is part of a site on which permission was granted for a housing development. On the opposite side of the road (west) is existing housing development consisting of two-storey dwellings.

There are two other concurrent VSL appeals for what has now been consolidated as one larger plot (as per my inspection of the 19th August 2021) This includes a plot to the immediate north also in the appellants ownership (ABP 309246) and a larger plot to the south and east taken from a larger field (ABP 309290 Thomas Simpson). All three parcels were assessed as one site by Kildare County Council under VS125 in 2018.

3.0 Statutory Context

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

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

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. This matter is not disputed by any parties

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”.

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 Kildare is designated as a ‘Moderate Sustainable Growth Town’.

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.

4.2. Kildare Town Local Area Plan 2012-2018

The site is located on lands zoned **Objective B** 'To protect and improve existing residential amenity: to provide for appropriate infill residential development; to provide for new and improved ancillary services'.

4.3 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 an L-Shaped site that includes the current appeal site and ABP 309246 site to the south (Also registered to the appellant)

PA Reg. Ref. 21/409 refers to an application for changes to house types on approved site PA 17/1271 (ABP 302534) lodged by Sonlee Limited that was refused permission in May 2021 for reasons relating to Policy DL1 and would seriously injure residential and visual amenities. (Padraig & Angela Leeson are listed as Directors in the application form)

PA Reg, Ref, 17/1271 (ABP Ref. 302534) refers to a 2019 grant to Tameric Management Consultants Ltd of permission for 14 residential units. (Patrick Conlon and Helen Conlon are listed as Directors in the application form)

VS – 125. Patrick Conlon and Reps Peter Conlon deceased, Section 7(3) Notices issued on 31st January 2019 were withdrawn in light of deficiencies with the maps. This referred to a site with an overall area of 3.2 hectares that included ABP 309246-21 and ABP 309290-21.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report

A document titled ‘Register of Vacant Sites Sheet Survey’ site reference VS-125 Site No. 19 (Kildare Town) include photographs with a date stamp of 18/03/2020 and refers to previous inspection on 23/10/2018. The document itself is however not dated. Following this a Section 7(1) Notice issued on the 4th September 2020.

Report dated 5th October 2020 refers to 'Consideration of Submissions in response to section 7(1) Notice'. This report refers to an inspection carried out on the 23rd October 2018 as proof of 12 month vacancy.

A recommendation was made by the Assistant Planner on 5th October 2020 stating that the site was vacant for at least 12 months prior to the issuing of the section 7(1) Notice and the subject site continues to be vacant and a notice under section 7(3) should be issued to the owner. This was issued on 18th December 2020.

6.2 Planning Authority Notice

Kildare County Council issued Notices on 4th September 2020 to the appellant under section 7(1) of the 2015 Act (as amended) 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 Kildare Town Local Area Plan 2012-2018.
- The site is situated in an area in which there is a need for housing
- The site is suitable for the provision of housing and,
- 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 18th December 2020 informing them that the site had been entered on the Vacant Sites Register.

7.0 The Appeal

The site is owned by Mr Patrick Conlon of Tully Road, Kildare, Co. Kildare. The landowner has submitted appeal to the Board, against the decision of Kildare County Council to enter the subject site on the Register.

7.1 Grounds of Appeal

The grounds of appeal are summarised as follows:

- No reasons set out in the Notices for why the site is included in the Vacant Sites Register. There is no reference to section 5(2).
- No rationale has been provided.
- The 12 months in question relates to the time preceding the issue of the decision of the notice from the Planning Authority, i.e the 12 months prior to 18 December 2020.
- The site does not meet the parameters set out in section 6(6).
- The site was in agricultural use with options being considered to commence development of the extant permission.
- The site is not in a ruinous or neglected condition and is used as agricultural land.
- There is no anti-social behaviour taking place on the site.
- There is no evidence to suggest that there is a reduction in the number of habitable houses in the locality as a result of the current condition of the site.

7.2 Planning Authority Response

A response was received on the 22nd February 2021. Points of note include:

- The Planning Authority is satisfied that the notices comply with the requirements of the Act and that the reasons for entry are clearly set out.
- The site is zoned 'residential' therefore the criteria outlined in section 6(6) is not applicable.

- Permission granted in 2019 (ABP 302543-18) does not detract from the fact that the site , as outlined in the notice, has performed no productive role for a period of more than 12 months from October 2018 to March 2020 when the site was surveyed. Therefore, it is clearly vacant and idle.
- There was no evidence of agricultural use in October 2018 or March 2020.
- Notwithstanding that the Planning Authority did not refers to section 6(6). It is satisfied that 2 of the 3 criteria contained in section 6(6) are met, Debris remained on site from previous demolition works leaving the site in a neglected condition and littering/dumping within the hedgerow along the roadside boundary which in the Planning Authority's view is anti-social behaviour.

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

- a) Zoned for residential development in the Kildare Town Local Area Plan 2012-2018.
- b) Specifically identified as a development parcel along with the adjoining folio (KE10717 owned by the same landowner) which has permission for 14 residential units.
- c) Located in an area where there is a clearly demonstrated demand for new residential units.

Notwithstanding the condition of the subject lands, they should be include on the register of vacant sites to encourage their development in accordance with the provision of the Kildare County Development Plan Core Strategy and the Kildare Town Local Area Plan.

7.3 Further Reponses

None.

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 18th 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 4th September 2020 notes that the site is zoned for 'residential' purposes in the Kildare Town Local Area Plan 2012-2018. 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 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)(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—

- (l) 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^h December 2020.

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 on the register did not give adequate reasons why the site should be considered for inclusion. The planning authority note reasons are set out and that the Notices comply with the legislation. 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 report (Register on Vacant Site Sheet) of the Assistant Planner refers to an inspection carried out in the 18th March 2020 and one on the 23rd March 2018 and stated that the majority of the site had been vacant/idle for 12 months.

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.

With regard to the use of the land for agricultural purposes. The Planning Authority stated that no evidence of agricultural use was observed in 2018 or 2020. The appellant has stated that the site was in agricultural use for the relevant period. I note the statement by the appellant however I refer the Board to section 9(2) of the Act and note that no evidence was submitted to support this. In the absence of such evidence I consider the planning authority's statement acceptable.

I also note, based on the available information that the appellant was a registered owner of the land in 2008, prior to the adoption of the Kildare Town Local Area Plan 2012-2018. I further note that the lands were zoned 'existing residential' in the 2002 Plan.

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.

This has not been disputed by either the Appellant or the Planning Authority, therefore I do not attend to address this matter.

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.

This has not been disputed by either the Appellant or the Planning Authority, therefore I do not attend to address this matter.

8.5.1 Core Strategy

The Planning Authority has referred to the Core Strategy in their conclusion in the response to the appeal. No further details have been provided. This matter has not been raised by the appellant in the grounds of appeal, therefore I do not attend to address this matter.

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

This has not been raised by either the Appellant or the Planning Authority, therefore I do not attend to address this matter.

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 by the planning authority.

The site adjoins the built up area of Kildare 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.

Whilst there are extant permissions on the site, construction activity had not commenced at the time the section 7(3) Notices were served. I note that at the time of my inspection (19th August 2021) works had commenced.

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. Works commenced after the appellant lodged their appeal under section 9 of the Act.

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 (KILD-04) at the townland of Kildare, Kildare, Co Kildare. was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18th 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 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

2nd November 2021