



An
Bord
Pleanála

Inspector's Report ABP-309290-21

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-01

Site Owner

Thomas Simpson (Legal
Representative of Patrick J. Burke
deceased).

Planning Authority Decision

Place on Register.

Date of Site Visit

19th 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.0.81 hectares 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 and is irregular in shape. The site currently appears to form part of a larger tracts of land, of which a portion to the north and west is 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 north and west 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) located to the north and west of the appeal site. This includes ABP 309246 and ABP 309247 owned by Patrick Conlon. 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 Local Area Plan 2012-2018

The site is located on lands zoned **Objective C1 New Residential** 'To provide and improve new residential areas and for associated local shopping and other services incidental to new residential development'.

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 ABP 309246 and ABP 309247 site to the north and west

PA Reg. Ref. 21/409 refers to a 2021 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.

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 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 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

Kildare County Council therefore proposes to enter the site onto 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 PJ Burke (deceased) The administrator of the Estate of Mr PJ Burke (late of Hanlon's Farm, Maddenstown, Co. Kildare), Mr Thomas Simpson,

has lodged an 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 each appeal can be summarised as follows:

Land Use Zoning:

- The site was zoned Residential under the Kildare Local Area Plan 2021-2018. The objective was not prolonged under section 19 of the Act of 2000. To the degree that the zoning of a tract of land for residential purposes is indicative of its suitability for housing purposes, it is submitted that the use of this land for housing will be appropriate when this land-use designation is re-imposed, although it is noted that this objective did not exist in the 12 months to 18 December 2020.

Infrastructure Deficit:

- The land was not suitable for residential development in the year to 18 December 2020 by reason of infrastructure deficit which prevented any housing construction thereon. There is a distinction between land that might be 'permission ready' and that which is 'development ready'.
- The Planning Officer Report noted 'no network readily available to extend to service site. Substantial assets to be delivered to allow site to be developed'
- Permission granted on adjoining site expressly envisage that the appeal site would be served by the access and estate road to be provided thereon, these new facilities have not been built (as of on 18 December 2020) with the effect that no construction could have taken place on the appeal site prior to the Council's notification.
- The site cannot be developed until the Planning Authority resolve traffic conflicts on the adjoining road, in particular traffic management at the bridge which can only accommodate one-way traffic along with the lack of footpaths.

Adverse Effect:

- Although the land is vacant there is no evidence of any adverse effect of its condition, there is no indication that the Council considered this issue in relation to the subject site, as distinct from the adjoining.
- It is submitted that the Planning Officer considered whether a large ensemble of land effects amenity and to the degree that it reached a negative opinion, this conclusion relates to the attributes of the adjacent tracts and not to this site itself.

Summary of Legal Opinion of Oisín Collins BL:

- Lands are zoned residential as per the Kildare Local Area Plan 2021-2018. The LAP has expired. Therefore is not in force and neither is the zoning.
- Council applied section 5(1)(a) which applies to residential land.
- The lands are not currently suitable for housing arising from an infrastructure deficit.

Summary of Letter from LK Shields Solicitors:

- Given the lack of zoning of the lands arising from the expiration of the last Local Area Plan 2021-2018 (Addressed in the attached appeal), the site is not currently a 'site consisting of residential land' as defined under section 3 of the Urban Regeneration and Housing Act 2015 (as amended)

The appeal includes the following documentation:

- Report of Farry Town Planning Ltd.
- Legal Opinion of Oisín Collins BL regarding lands at Maddenstown, Co. Kildare.
- Letter of 22 January from LK Shields Solicitors.

7.2 Planning Authority Response

A response was received on the 3rd March 2021. Points of note include:

Zoning of Site:

- The appellant is of the opinion that the zoning of land outlined in the Kildare LAP 2021-2018 no longer applies due to the expiry of the plan. However, the

Council is of the opinion that the legislation does not provide for the extinguishment of a local area plan in the absence of a replacement plan. Therefore the zoning ascribed to land in the Kildare Local Area Plan 2012-2018 continue to apply.

- The time of the appoint of Mr Simpson is noted. However it is also noted the Council's initial survey of the site took place in October 2018 after the appointment of Mr Simpson as administrator of the Mr. Burke's estate. It is contended that Mr Simpson had authority after his appointment on the 31st July 2017 to move development forward on this residentially zoned land.
- The Council is satisfied that the site meets all 3 tests of section 5(1)(a) in that 1) the site is situated in an area in need of housing (refer to Housing Need Assessment for Kildare), 2) the site is zoned phase 1 residential making the site suitable for housing and 3) the site or the majority of the site is vacant (which is acknowledged by the appellant).

Infrastructure deficit:

- The Council acknowledge the statement in the initial Survey Report regarding wastewater 'no network readily available to extend to service site. Substantial assets to be delivered to allow site to be developed'. However, following further investigation with Water Services it transpired that there is capacity in the network and a connection is available near the subject site subject to agreement/consent with Irish Water.
- The new pumping station at Dunmurray Road was commissioned and operational in the first quarter of 2017 has capacity to service housing at this location.

- The Council is satisfied that the roads infrastructure in the area is adequate to service residential development at this location. It should be noted that there is no provision in the Kildare LAP 2012-2018 requiring additional infrastructure within the site.
- Development of the site is not constrained by the requirement to connect development on adjoining northern lands (planning reference 17/1018 and 19/946). The site is not dependent on adjoining lands being developed first. Furthermore conditions attached to these permission require footpaths to be delivered by the developer.

Adverse Effect:

- As the site is not identified as regeneration lands in the Kildare LAP there is no requirement to demonstrate adverse effects.

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

- a) Zoned for residential development in the Kildare Local Area Plan 2012-2018.
- b) The site or the majority of the site is vacant or idle.
- c) Located in an area where there is a clearly demonstrated demand for new residential units.

The Planning Authority contend 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 provision of the Kildare County Development Plan Core Strategy and the Kildare Town Local Area Plan.

7.3 Further Responses

Appellant response to the Planning Authority's submission received on 31st March 2021 broadly reiterates the grounds of appeal. Points of note include:

Zoning of Site:

- With regarding to the Kildare Local Area Plan 2012-2018, reference to section 18(4)(a) of the 2000 Act which indicates the period a plan is to remain in force. It is submitted that the Kildare LAP ceased to have any effect from the year 2018 unless its lifespan was statutorily prolonged under section 19(1)(d). Kildare County Council did not avail of this provision.

- Reference to Table 3-4 of the 'Kildare County Development Plan 2017-2023 2 Year Progress Report'. Regarding status of Local Area Plan/Settlement Plans. The table states as follows 'Pre-draft public consultation in 2018, Preparation of Draft LAP deferred pending adoption of RSES'. The Council's current rebuttal statement to the Board is wholly inconsistent with the fact that it did not indicate that her Kildare Local Area Plan 2012-2018 was still 'in effect' in the Progress Report.
- The Planning Authority did not offer up a rebuttal of Mr. Collins BL Opinion. Update Opinion of Oisín Collins BL submitted.
- No response received from KCC to submission made in March 2019 and October 2020.
- It was not clear how the Administrator (Mr Simpson) could proceed to bring forward development due to the fact that a replacement LAP had not been adopted.
- The subject site is not 'development ready' because of infrastructure deficits and refute the Council's assessment in this regard. The Council has not demonstrated there is adequate capacity in the system for the calendar year before the registration notification (from 18 December 2020)
- The Board also needs to be assured of the ownership status of this infrastructure between 18 December 2019 and 18 December 2020 if it is to conclude that the appeal tract comprises a vacant site.
- The Council state that the Pumping Station at Curragh Finnis 'recently taken in charge by Irish Water' but do not state if this TIC process was completed prior to 18 December 2020. If the infrastructure was in private ownership at the time it would not be reasonably open to An Bord Pleanála to conclude that this property satisfies the statutory requirements of the Act of 2015 for vacant site status.
- Inadequate road infrastructure.
- Lands to the north/northwest were for sale, therefore unable to engage with adjoining owners/developers.

- The issue in respect of ownership of the wastewater infrastructure was only confirmed by Irish Water letter dated 8yh March 2021.
- Waiting confirmation from CIE/Iarnrod Eireann regarding 17.5m setback from the rail line

Summary of updated Legal Opinion of Oisin Collins BL (29th March 2021):

- Refers to section 18(4) of the 2000 Act which sets out that a Local Area Plan prepared under this section shall indicate the period for which the plan is to remain in force.
- The Kildare Local Area Plan 2021-2018, the implication is that after 2-18, the plan would no longer remain in force.

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 19^h 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—

- (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) (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 18th December 2020.

The main concerns of the appellant is :

- 1) The site is not zoned residential as the Kildare Local Area Plan 2012-2018 has expired.
- 2) The site is not suitable for housing as there is an infrastructure deficit (wastewater and roads)

The planning authority do not agree and are satisfied that the lands are zoned for residential use, are vacant/idle and have been for the 12 months prior to the Notices, that there are no infrastructure deficits and there is a need for housing in the area.

As the site is not located on regeneration lands the issue of adverse effect does not arise.

Before I address the issue of vacancy and the requirements of the Urban Regeneration and Housing Act 2015 (as amended) I shall address whether the site complies with the definition of 'residential lands' in accordance with the 2015 Act

Whether the land is Residential Land as defined in Section 3 of the Urban Regeneration and Housing Act 2015 (as amended)

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."

The site is located on lands zoned C1 New Residential 'To provide and improve new residential areas and for associated local shopping and other services incidental to new residential development' as detailed in the Kildare Town Local Area Plan 2012-2018.

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."

Variation No. 1 of the Kildare County Council Development Plan 2017-2023 came into effect on the 9th June 2020. Variation No. 1 was on foot of changes in national and regional policy, namely the publication of Project Ireland 2040: National Planning Framework (NPF), The Implementation Roadmap for the National Planning Framework and the Eastern and Midland Regional Assembly (EMRA) Regional Spatial and Economic Strategy (RSES).

Having regard to Variation No. 1 of the county Development Plan and the implications for LAPs which were due to lapsed during this period and subsequently delayed until the review of the County Development Plan 2023-2029.

I am satisfied that the site meets the literal definition of 'residential lands' in contained in section 3 of the 2015 Act. I consider this a reasonable approach given that the land is still zoned residential and is consistent the approach taken by An Bord Pleanála in recent decisions in Kildare town.

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

8.1 Vacant or Idle

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 examined in later sections of this report.

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

- The 'site' must exceed 0.05 hectares in size. The appeal site has an area of 0.3 hectares therefore complies with this requirement.
- The site or the majority of the site, must have been vacant for the duration of the 12 months preceding the date of entry on the Register. This matter is not disputed by the appellant
- No regard is to be had to any unauthorised development or use. This has not been raised by either party. I do not propose to consider this further.

The appellants do not dispute that the site has been vacant for the relevant period. Their main contention was that it should not be considered 'residential' as they submit the zoning lapsed in 2018 along with the LAP.

8.2 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.

A Vacant Sites-Kildare Town Housing Need Assessment Report prepared by Kildare County Council Planning Department in August 2020, this is submitted with the grounds of appeal (Appendix D). This 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 Kildare area.
3. The number of households qualified for social housing support in the Kildare 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 Kildare 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. The appellant has not disputed the need for housing in the area.

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 Kildare and zoned for residential purposes in the LAP.

8.3 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.

8.3.1 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 need for housing in the area has not been disputed by the appellant. It is submitted that once the issue of zoning is addressed the appellant intends to pursue the development of the site.

8.3.2 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 appellant has submitted that there are both wastewater and road infrastructure deficits and therefore the site is not suitable at this time for housing as it is not 'development ready'.

The Council acknowledge the statement in the initial Survey Report regarding wastewater 'no network readily available to extend to service site. Substantial assets to be delivered to allow site to be developed'. However, following further investigation with Water Services it transpired that there is capacity in the network and a connection is available near the subject site subject to agreement/consent with Irish Water. The new pumping station at Dunmurray Road was commissioned and operational in the first quarter of 2017 has capacity to service housing at this location.

I note the correspondence on file from Irish Water and the submission by the Planning Authority. In addition permission was granted in 2020 under PA Ref. 17/1271 (ABP Ref. 302534) on the adjoining site to the north for a residential development. I draw the Board attention to section 9 of the Act which 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. In this regard I note that while extensive documentation has been submitted with the grounds of appeal and subsequent response to the Planning Authority's submission. I note that no evidence has been submitted to support the appellants assertion that the site was not capable of being serviced for the 12 months preceding notification of registration.

The appellant has also raised that the existing roads infrastructure is deficit and therefore raises issues regarding the development of the site. The Council have stated that it is satisfied that the roads infrastructure in the area is adequate to service residential development at this location. It should be noted that there is no provision in the Kildare LAP 2012-2018 requiring additional infrastructure within the site. And that the development of the site is not constrained by the requirement to connect development on adjoining northern lands (planning refence 17/1018 and 19/946). The site is not dependent on adjoining lands being developed first. Furthermore conditions attached to these permissions require footpaths to be delivered by the developer.

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 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 to the north, 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. Notwithstanding the development of the appeal site is not dependent on this permission being built out first.

8.3.3 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 residential lands contained in section 3, 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-01) 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 site is on residential lands,
- (e) There is a need for housing in the area,

(f) 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

4th November 2021

DECISION QUASHED

DECISION QUASHED