



An  
Bord  
Pleanála

## Inspector's Report ABP-309297-21

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<b>Type of Appeal</b>	1. Section 9 Appeal against section 7(3) Notice (Mon-05)
<b>Location</b>	The Malt House, Canal Harbour, Monasterevin, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority VSL Reg. Ref.</b>	Mon-05
<b>Site Owner</b>	Clonmel Enterprises.
<b>Planning Authority Decision</b>	Enter onto Vacant Sites Register
<b>Date of Site Visit</b>	19 <sup>th</sup> August 2021.
<b>Inspector</b>	Daire McDevitt

## **1.0 Introduction**

This appeal refers to a Section 7(3) Notice issued by Kildare County Council, stating their intention to enter the lands The Malt House, Canal Harbour, Monasterevin, 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 a stated area of c. 101hectares is located at the north western end of the town of Monasterevin. The site fronts onto the eastern side of the Grand Canal. Monasterevin Railway Station (main Dublin/Cork line) is located a short distance to the north of the site. There is a two- storey apartment block located to the east/south east of the site. There are numerous residential developments/buildings in the vicinity. The Convent of Mercy is to the south of the site beyond which lies the Church of St. Peter and St. Paul and its attendant grounds (corner of Drogheda Street and St. Mary's Lane).

The site is occupied by a disused Malt House (formerly Jameson Maltings) and associated buildings (Protected Structures). There is evidence of works having commenced to convert the Malt House into apartments. A separate two-storey house was previously the Manager's House (protected structure). The roof of this building is substantially intact. It was noted under ABP 303929-18 that this appeared to be vacant for many years. The remains of a stable block are located opposite the Manager's House. There is a bungalow located near the northern boundary of the site.

The site is served by a single vehicular access located to the front of the site and opens onto Canal Harbour Road. This is the original access to the complex of Malt House buildings. The entrance to a substantial two-storey dwelling (the original Railway Station house) immediately adjoins the Malt House entrance to the north. Beyond this entrance the public road passes under the railway and line. The entrance to the railway station is located a short distance beyond.

The site is served by a separate pedestrian entrance onto St. Mary's Lane. An existing dwelling (Togher Lodge) which fronts onto St. Mary's Lane immediately abuts the southern side of this pedestrian route. This pedestrian route (via Drogheda Street and St. Mary's Lane) is independent of the vehicular entrance to the site via Canal Harbour. St. Mary's Lane is a cul-de-sac terminating in a hammerhead adjacent to a c. 2m high boundary wall to the rear of the application site. The two-storey apartment block to the rear of the appeal site is located at the bottom of this cul-de-sac. The private open space to the rear of the apartment block adjoins the northern side of the aforementioned pedestrian route.

The site is located in an Architectural Conservation Area and contains the following protected structures: Malt House (RPS B21-27), Manager's House (RPS B21-08) and Stable Block.

### **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 18<sup>th</sup> 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—

- (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”.

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 (as varied)**

The Kildare County Development Plan 2017-2023 is the operative County Development Plan wherein Monasterevin is designated as a ‘Self-Sustaining 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.

### **Monasterevin Local Area Plan 2016-2022**

The site is in an area zoned 'B: Existing Residential & Infill' which has a zoning objective 'To protect and improve existing residential amenity; to provide for appropriate infill residential development and to provide for new and improved ancillary services'.

The following are included on the Record of Protected Structures:

- Warehouse (Malt House), Canal Harbour Ref. B21-27 (NIAH 11816093) Described on the NIAH as a 7 bay three-storey rubble stone warehouse dating from 1850 re-fenestrated in the 1980s. (of Architectural, Historic, Social interest - Regional importance).
- House (Managers), Canal Harbour Ref. B21-08 (NIAH 11816095). Described on the NIAH as a Detached three-bay former store manager's house c. 1885 built as the residence for the store manager of the former Jameson Maltings. Now disused. (of Architectural, Historical, Social interest - Regional Importance).
- The stables associated with the former Manager's House are not included on the Record of Protected Structures in their own right, but form part of the 'attendant grounds' of other Protected Structures. The stables are included on the NIAH (NIAH 11816081) described as Detached six-bay single storey stable building, c. 1885, possibly built as a maltings store with series of segmental headed door openings

along door openings (of Architectural, Historical and Social interest – of Regional importance).

The adjoining dwelling to the north of the site (old railway Station House) is a Protected Structure (B21-07).

The Church of St. Peter & St. Paul on Drogheda Street and the Convent of Mercy are Protected Structures (B21-21- & B26-43).

Part of the site is located within an Architectural Conservation Area (ACA) as designated within the Plan.

Section 16.15.1 states that it is one of the key objectives to protect and enhance Monasterevin's significant and unique built heritage. It is policy (as set out at BH 3) 'To protect and preserve buildings and the spaces between structures that create a distinctive character in the Architectural Conservation Area...

Section 6 (xi) states that 'The protection and enhancement of the unique built heritage and streetscape in Monasterevin is one of the core objectives of the plan.

Section 6.6.2 (iii) of the Plan acknowledges the excellent and abundant provision of public open space (parks, canal bank, River Barrow etc.) that existing in the town.

Section 6.6.2 (vi) acknowledges that there is a high level of vacant and derelict properties in the town particularly in the town centre. The Plan aims to provide the framework for a more integrated approach to new development and regeneration within the town centre.

General policies and objectives in relation to flood risk management are set out at Section 6.1.5 of the Plan.

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## 5.0 Planning History

### Site:

**PA Ref.17/377 (ABP Ref. 303292-18)** refers to a 2019 decision to refuse permission for the redevelopment of the protected structures and their conversion to residential units (23 units (apartments/duplex), construction of 28 house, internal distributor road, parking and all ancillary works. Reasons for refusal related to poor urban design, substandard public realm and negative impact on the curtilage of protected structures and ACA,

**VS-083** refer to the site

## 6.0 Planning Authority Decision

### 6.1 Register of Vacant Sites Report

A document titled 'Register of Vacant Sites Sheet Survey' site reference VS-083 (Malthouse, Canal Harbour, Monasterevin) include photographs with a date stamp of 26/03/2020 and refers to previous inspection on 22/10/2018. The document itself is however not dated. Following this a Section 7(1) Notice issued on the 4<sup>th</sup> November 2020.

Report dated 17<sup>th</sup> December 2020 refers to 'Consideration of Submissions in response to section 7(1) Notice'. This report refers inspection carried out on the 24<sup>th</sup> October 2018 and 26<sup>th</sup> March 2020 as proof of 12 month vacancy.

The report prepared by the A/Senior Executive Planner notes that the site was inspected on 24/10/18 and 26/03/20, proving 12 month 'vacancy' A recommendation was made by the A/Senior Executive Planner on 17<sup>th</sup> December 2020 recommends that a notice under section 7(3) should be issued to the owner. This was issued on 21<sup>st</sup> December 2020.

### 6.2 Planning Authority Notice

Kildare County Council issued Notices on 25<sup>th</sup> August 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 Monasterevin Local Area Plan 2016-2022.
- 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 21<sup>st</sup> December 2020 informing them that the site had been entered on the Vacant Sites Register.

## **7.0 The Appeal**

Clonmel Enterprises 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 appeal can be summarised as follows:

- The site is currently occupied. The Malt House is the occupied and is the subject of a Residential Tenancies Board Determination Order (28<sup>th</sup> September 2018) and Court Order (17<sup>th</sup> May 2019) and that the matter remained unresolved.



- The applicants have previously initiated the development of the site through the lodgement of a planning application that was refused permission by Kildare County Council and An Bord Pleanála. It is their intention to lodge an application in Q2 2021. As such argues that they are progressing in bringing the site forward for development.

## 7.2. Planning Authority Response

A response was received on the 17<sup>th</sup> February 2021. Points of note include:

- In relation to the 'status' of the site, the appellant/owner indicated that the site is 'occupied'. A copy of a District Court Order dated 17<sup>th</sup> May 2019 is submitted with the Appeal in which the Court orders the enforcement of a Determination Order from the Residential Tenancies Board (dated 28<sup>th</sup> September 2018) requiring the current 'tenants' to vacate the 'dwelling at the Malt House' within 28 days. This information was not submitted to KCC in response to the Section 7(1) Notice. It is inferred that this Court Order has not been enforced to date.
- The Planning Authority note that it is unclear whether the Malt House is being occupied as a dwelling as this use was not evident at the time of inspection (no internal inspection was sought) and no proof has been submitted to confirm this. If the Board is satisfied that the building is being occupied as a dwelling, then the subject site would not be considered vacant in accordance with section 5(2) of the Act.
- Planning Application 17/1377 was refused by KCC and ABP (ref.303292-18) and that a future application is anticipated in Q2. This is not considered a material consideration in accordance with the criteria contained in the Urban Regeneration and Housing Act 2015 (as amended).

## 7.3 Further Responses

A response to the Planning Authority's response was received from the appellant on the 18<sup>th</sup> March 2021. Points of note include:

- The site is occupied by tenants that are trespassing in the property. It is stated that the appellant purchased the property in 2017 with in-situ tenants. A subsequent tenancy agreement was signed and following a period of non-payment of rent this agreement was terminated in 2018. Subsequently a RTB Determination Order and Court Order were obtained. The appellant confirmed that there are still awaiting the execution of the Court Order.
- The appellant invites the ABP Inspector to visit and confirm the presence of a tenant on the property.

## **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 21<sup>st</sup> December 2020. The notices issued by the council were not explicit in stating if the site was regarded as residential land under section 5(1)(a), as opposed to regeneration land under section 5(1)(b). The Section 7(1) Notice dated 4<sup>th</sup> November 2020 notes that the site is zoned for 'residential' purposes in the Monasterevin Local Area Plan 2016-2022. 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 21<sup>st</sup> December 2020 so the period to be considered when determining whether the site is vacant and should be on the register is from 22<sup>nd</sup> 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 21<sup>st</sup> December 2020.

The main concern of the appellant is :

- 1) The malthouse is occupied as a dwelling and therefore the site cannot be considered vacant/idle

There is a Determination Order from the Residential Tenancies Board (dated 28<sup>th</sup> September 2018) requiring the current 'tenants' to vacate the 'dwelling at the Malt House' within 28 days. This information was not submitted to KCC in response to the Section 7(1) Notice. The appellant stated in correspondence dated 18<sup>th</sup> March 2021 that they are still awaiting the execution of the Court Order.

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

### **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) refers to an inspection carried out in the 26<sup>th</sup> March 2020 (date stamp on photograph) and one on the 23<sup>rd</sup> October 2018 and stated that the majority of the site had been vacant/idle for 12 months. I note that the report prepared by the A/SEP refers to the 24<sup>th</sup> March 2020.

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 occupation of the Malt House and its use as a dwelling The Planning Authority stated that the use of the Malt House as a dwelling was not evident in 2018 or 2020. The appellant has stated that the dwelling has been occupied and (at the time of writing their response) remained occupied and the matter unresolved. The site is overgrown and there was no evidence of the Malt House being occupied at the time of my inspection. I did not seek to inspect its interior as the relative period for vacancy refers to the 12 months preceding date of entry onto the Vacant Site Register and not the appeal period.

I note that the Planning Authority in their response to the appeal (17<sup>th</sup> February 2021) stated that it is unclear whether the Malt House is being occupied as a dwelling as this use was not evident at the time of inspection (no internal inspection was sought) and no proof has been submitted to confirm this. If the Board is satisfied that the building is being occupied as a dwelling, then the subject site would not be considered vacant in accordance with section 5(2) of the Act. As noted above there was no evidence that the structure was occupied at the time of my inspection. Notwithstanding, the relevant dates for vacancy refer to the 12 months preceding the entry of the site onto the Vacant Site Register on the 21<sup>st</sup> December 2020, therefore the relevant period refers to the 22<sup>nd</sup> December 2019. I further note that notwithstanding the applicant's detailed response to the Planning Authority's submission of the 17<sup>th</sup> February 2021 and the inclusion of a copy of a District Court Order dated 17<sup>th</sup> May 2019 in which the Court orders the enforcement of a Determination Order from the Residential Tenancies Board (dated 28<sup>th</sup> September 2018) requiring the current 'tenants' to vacate the 'dwelling at the Malt House' within 28 days. I note the submission of the above mentioned documents, however there is no evidence that has been submitted that the structure (dwelling) was occupied 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.

#### **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 the Appellant, therefore I do not intend 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 the Appellant, therefore I do not intend to address this matter.

### **8.5.1 Core Strategy**

This has not been disputed by the Appellant, therefore I do not intend 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.

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 is located within the built up area of Monasterevin 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.

There are no extant permission on the site. Furthermore, 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 bring the site forward for development by lodging an application in Q2 2021 cannot be considered as meaningful use for the site so as to remove it from the register. I further note there is no record of a planning application lodged as per the Kildare County Council online Planning portal.

### **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 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 (MAY-06) at The Malt House, Canal Harbour, Monasterevin, Co Kildare. was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 21<sup>st</sup> December 2020 shall remain.



## 11.0 Reasons and Considerations

Having regard to

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellants,
- (c) The report of the Planning Inspector,
- (d) the 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.

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Dáire McDevitt  
Senior Planning Inspector

26<sup>th</sup> February 2022