
COUNSEL OPINION

QUERIST: Aston Limited

AGENT: Jacinta Conway, Arthur Cox LLP

Date: 20 August 2025

Introduction

1. I have been asked to prepare an Opinion in respect of an application for Strategic Housing Development (“**SHD**”) of 569 residential units, crèche and associated site works at Greatconnell, Newbridge, Co. Kildare.

2. The application was initially lodged with An Bord Pleanála (as it then was) on 13 April 2022 under the Planning and Development (Housing) and Residential Tenancies Act 2016 (the “**2016 Act**”). By way of correspondence dated 24 July 2025, An Coimisiún Pleanála (the “**Commission**”) notified Declan Brassil and Company Limited (“**DBCL**”) that it intended to hold a limited agenda oral hearing in respect of the application for the proposed development. By way of further correspondence dated 6 August 2025, the Commission identified two specific issues to be addressed at the oral hearing scheduled on 4 September 2025.

3. First, the Commission is seeking clarity as to the current zoning status of the subject site, given the expiration of the Newbridge Local Area Plan 2013-2019 (“**LAP**”). The second issue concerns the relevant provisions of the Kildare County Development Plan 2023-2029 (the “**Development Plan**”), with particular regard to the ‘Core Strategy’ and Table 2.8 which indicates a Housing Target for 2023-2029 of 1,601 units for Newbridge and the number of dwellings already approved within this timeframe, as well as the remaining capacity. DBCL has prepared a submission for the oral hearing and this Opinion will be enclosed with that submission.

Zoning Status of the Proposed Development

4. In order to address the effect of the Newbridge LAP on the zoning of the site of the proposed development, I will first identify the zoning of the site by reference to the Development Plan and the Newbridge LAP as identified in the Planning Report and Statement of Consistency submitted with the application. Secondly, I will address the status of the Newbridge LAP and its implications for the pending application before the Commission.

5. As stated at §5.4.1 of the Planning Report and Statement of Consistency, the site of the proposed development is the subject of two land use zoning objectives in the Newbridge LAP. The majority of the site is zoned C ‘New Residential’ (*‘To provide for new residential development’*), while an area of the site adjoining the River Liffey is zoned F ‘Open Space & Amenity’ (*‘To protect and provide for open space, amenity and recreational provision’*). This is also illustrated by Drawing PA_010_SITE LAYOUT which references MAP 7 on p.123 of the Newbridge LAP to illustrate the zonings.

6. The Newbridge LAP was adopted on 23 December 2013 and came into effect on 29 January 2014. The LAP was meant to expire in 2019 but was extended by resolution for a further two years on the 19 December 2018 and expired on 22 December 2021, i.e. before the application was initially lodged with the Board.¹

7. At a special meeting of KCC on 9 December 2022, the Elected Members of KCC voted to adopt the Development Plan and that plan took effect on 28 January 2023.

8. As stated at §5.5 of the Planning Report and Statement of Consistency submitted with the application, Newbridge retained its status as a Self-Sustaining Growth Town and Level 2 centre in the Retail Hierarchy in the draft Development Plan. Table 2.8 ‘Settlement Hierarchy – Population and Housing Unit Targets Q1-2023 to Q2-2028’ of the Draft Plan also set a Housing Target of 1,061 no. new units in the town between 2023 and 2028 to house a population increase of 2,917 no. persons. This table included a Target Residential Density of between 35 to 50 units per hectare for development on Residential Zoned Land. Table 2.8 of the adopted Development Plan also identified Newbridge as a Self-Sustaining Growth Town.

¹ [Newbridge LAP 2013-2019 - Kildare County Council](#)

9. Objective CS O9 in Chapter 2 of the Kildare County Council (“KCC”) Development Plan stated that KCC would review and prepare a portfolio of Local Area Plans for the mandatory LAP settlements (and environs, where appropriate) in accordance with the objectives of the County Development Plan and all relevant Section 28 Ministerial Guidelines. This includes Newbridge. The Development Plan 2-Year Progress, Implementation and Monitoring Report published in February 2025 anticipated (at pp.42, 81, 254) that the Draft Newbridge LAP 2025 to 2031 would be published in Q1 2025.²
10. It appears that KCC commenced a process for the preparation of a new LAP for Newbridge for the period from 2025 to 2031 and published an Issues Paper for public consultation between 10 October and 28 November 2023. A total of 95 submissions were made at this pre-draft stage and the KCC Planning Department prepared a Report on 10 March 2024 summarising the issues at the pre-draft public consultation stage.³ However, at the time of preparing this Opinion, a new LAP had not been adopted for Newbridge pursuant to s.20 of the Planning and Development Act 2000 (the “2000 Act”), while the previous LAP has elapsed having already been extended.
11. The Development Plan does not refer to the fact that the LAP had already expired at that stage or expressly refer to the implications for the sites that were zoned under the Newbridge LAP but does commit to the preparation of a new LAP. I will address the implications of this below.

Statutory Context

12. In order to determine the implications of the status of the LAP, it is necessary to examine the statutory context that pertains to this application.
13. As I noted, the application was made under the 2016 Act. The Planning Report and Statement of Consistency submitted with the application includes a statement setting out how the proposal will be consistent with the objectives of the Kildare County Development Plan 2017-2023 (which was in force at the time), the Newbridge LAP and relevant Section 28 Ministerial Guidelines.

² [KCDP 2 Year Report Issue 25225.pdf](#)

³ [Newbridge Local Area Plan 2025-2031 - Pre Draft Public Consultation | Kildare County Council](#)

14. The application was also accompanied by a Material Contravention Statement pursuant to Section 8(1)(iv)(II) of the 2016 Act which identified that the proposed development may constitute a material contravention of core strategy and settlement strategy objectives of the Development Plan relating to housing allocations as well as a policy in the LAP relating to building typology and specifically the provision of apartment development ‘generally’ outside of town centres and adjoining public transportation corridors.
15. The Material Contravention Statement also identified that the *majority* of the site was zoned as Objective C - ‘New Residential’.
16. It is relevant to note that the definition of “strategic housing development” in the 2016 Act means the:

“development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses”.
17. Given the definition of SHD in the 2016 Act, it is necessary to determine whether the fact is still zoned “residential”, as it was when the LAP was in force. It is not necessary that the entirety of the site is *exclusively* zoned as “residential”.
18. Furthermore, as explained in *Heather Hill Management Co. CLG v An Bord Pleanála* [2019] IEHC 450, the use which is to be made of land is generally determined by reference to the *principal* use, and uses which are *ancillary* to the principal use (such as for example roads, car parking and hard standing areas) are regarded as being part of, or subsumed within, the principal use.
19. The KCC Development Plan does not appear to *expressly* identify any zoning for the site of the proposed development, in contrast to the Newbridge LAP, although Chapter 2 does reiterate that Newbridge is a Self-Sustaining Growth Town. However, notwithstanding the expiry of the Newbridge LAP, the site of the proposed development should continue to be treated as zoned for residential use.

20. First, while there is nothing in the KCC Development Plan that expressly states that the “New Residential” zoning status in the Newbridge LAP was to be continued in the Kildare Development Plan, equally there is nothing which suggests an intention to depart from the zoning status identified in the LAP or which designates the site of the proposed development by reference to a *different* zoning. This is reinforced by the fact that the KCC website states that KC will have regard to a number of adopted plans (including the Newbridge LAP) until such time as they are reviewed or another plan is made. In my view, this indicates an intention by KCC to preserve the status of the Newbridge LAP, including the residential zoning status of the site of the proposed development, until a new LAP is made.
21. Secondly, as explained by the High Court in *Redmond v An Bord Pleanála* [2020] IEHC 151, whereas the label “zoning objective” as employed under a development plan will usually coincide with the legal concept of a zoning objective, the label cannot be conclusive. The concept of a zoning objective is a term of art under the planning legislation. The concept is referred to in s.10(2)(a) of the 2000 Act as follows.

“(2) Without prejudice to the generality of subsection (1), a development plan shall include objectives for— (a) the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses), where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated;”

22. As stated by Simons J. in *Redmond v An Bord Pleanála* [2020] IEHC 151, it would be unsatisfactory if the label that the planning authority attached to an objective in the development plan was to be conclusive of whether the objective was a zoning objective. Put otherwise, the fact that a development plan mistakenly describes a particular policy as a “zoning objective” cannot defeat a claim for compensation. It is clear from the case law that the courts will consider the *substance* of the relevant development plan policy or objective in order to determine whether or not it operates to exclude compensation. See, for example, *Ebonwood Ltd v Meath County Council* [2004] 3 I.R. 34.

23. In my view, the logic of this analysis is that the absence of a particular zoning objective does not necessarily mean that a particular area no longer enjoys the benefit of a zoning status, if this can be inferred from the surrounding context which in this case would be the supportive policy context in the KCC Development Plan and the absence of any contrary evidence that the site of the proposed development no longer remains zoned as residential.
24. Thirdly, local area plans are subservient to the development plan and s.19(2) of the 2000 Act provides that a local area plan must be consistent with the objectives of the development plan and its core strategy. Section 18(4)(b) also provides that, in the event of conflict, it is the development plan which prevails, and the relevant provisions of the local area plan cease to have effect. In any event, there is no conflict between the Newbridge LAP and the KCC Development Plan, given that the Newbridge LAP has expired, and it is permissible to consider the application in the context of the KCC Development Plan which supports the principle of residential development at the site of the proposed development.
25. Therefore, in my view, the Commission would be entitled to conclude that the site of the proposed development has remain zoned as residential when the Development Plan was adopted by KCC, in the absence of any express statement to the contrary, and that the zoning as “New Residential” zoning status did not lapse when the LAP expired.

Lapsed LAP does not preclude decision on application

26. Furthermore, the fact that the Newbridge LAP has lapsed does not mean that the Commission is precluded from determining the application.
27. Section 9(1) of the 2016 Act states that the Board **shall** consider the report of the planning authority; any submissions or observations received by the Board consequent on the publication of a notice pursuant to s.8(1)(a)(vii), or the sending of a notice pursuant to section 8(1), and any other relevant information, in so far as they relate to— (A) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development, (B) the likely effects on the environment or the likely effects on a European site, as the case may be, of the proposed development, if carried out. The Board must also consider an Environmental Impact Assessment Report (“EIAR”) or

Natura Impact Statement (“**NIS**”) submitted to the Board pursuant to s.8(2), and (c) any report or recommendation prepared in relation to the application.

28. Section 8(2) states that, in considering the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the strategic housing development, the Board **shall** have regard to, inter alia, the provisions of the development plan, including any local area plan if relevant, for the area.
29. The fact that s.8(2) includes the words “if relevant” suggests that this is only a binding consideration where a local area plan is in fact in force.
30. In my view, s.8(2) of the 2016 Act should also be construed as indicating that, in making a decision, on a SHD application, the Board (now the Commission) is ultimately guided by the conceptual framework of “proper planning and sustainable development”.
31. There is an analogy here with Strategic Infrastructure Development (“**SID**”) applications, as illustrated by the decision of the Supreme Court in *Callaghan v An Bord Pleanála* [2018] IESC 39. There, Clarke C.J. stated (§8.10) that the ultimate consideration which must be given to the final decision to grant or refuse permission (and if granting to consider what conditions must be imposed) remains one where the same overall considerations have to be applied whether the decision is made by a planning authority (with or without an appeal to the Board) in an ordinary case or by the Board in an SID case. The ultimate test is whether the decision maker is satisfied that the development is consistent with proper planning and sustainable development.
32. On that construction, the fact that an LAP may have been in force in a particular area but has now lapsed is not preclusive of the Commission determining the application. Such a preclusive approach is not supported by a textual interpretation of the 2016 Act, either specifically by examining the words used in s.8 of the Act or by adopting a more contextual view.

33. The Supreme Court has confirmed that, in interpreting the legislation it was necessary to place the words used by the legislature in the context in which they appear, including the scheme of the Act as a whole: see *The People (DPP) v Brown* [2019] 2 I.R. 1.
34. As Murray J. stated (§106) in *Heather Hill Management Company v An Bord Pleanála* [2022] IESC 43, the first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning.
35. However, those words must be viewed in context; what this means will depend on the statute and the circumstances. In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language. If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted. The basic proposition is that context is critical: both immediate and proximate.
36. In my view, such an interpretative approach would favour an interpretation that the Commission should interpret the 2016 Act by reference to the overarching framework of determining whether an application is consistent with “proper planning and sustainable development”, having regard to the general objectives in the KCC Development Plan that refer to development in Newbridge, rather than a preclusive approach which would require the Board to refuse the application in the absence of a formally adopted LAP, where a plan which previously had been in force was expired.
37. This approach is also more consistent with the stated objective of the 2016 Act which is to facilitate the implementation of Government housing policy. The alternative approach would be to stymie housing development in any area where an LAP had expired or was not in force, regardless of the wider planning and policy context.⁴ In my view, this was not the intention of the Oireachtas when enacting the 2016 Act.

⁴ I understand that a similar view was also expressed in the course of oral submissions during the hearing of joined cases of *Cairn Homes Properties Ltd. v An Bord Pleanála* [2024/1371JR] and *Keldrum Ltd. v An Bord Pleanála* [2024/1198JR] which was listed for hearing on 11 April 2025 (but where no judgment was delivered).

38. It is possible to draw an analogy with the logic in the judgment of Haughton J. in *Element Power v An Bord Pleanála* [2017] IEHC 550 where he observed (§49) that the Board must operate within the four corners of the statutory framework established under European law and the relevant domestic legislation, particularly the 2000 Act and planning regulations, existing statutory guidelines, and local policy as set out in existing county development plans. The Board cannot take decisions based on considerations that fall outside this framework.
39. Relatedly, in *Tristor Limited v The Minister for the Environment* [2010] IEHC 397 (in the context of a challenge to a Ministerial Direction on the Dun Laoghaire Rathdown development plan), Clarke J. stated (§6.7) that what the Court needs to consider is what the Act actually says needs to be taken into account, or what the Act actually says is the proper basis for the making of a statutory decision and in addition the Court may also look at what might be said to be required or excluded, by implication, by virtue of the subject matter, scope and purpose of the relevant legislation.
40. Adopting that approach, in my view, a textual interpretation of the 2016 Act does not support the view that the Oireachtas intended, either expressly or implicitly, to prevent a decision-maker from determining an application in the absence of an extant LAP.
41. This would be a sclerotic approach to decision-making which is not consistent with the purpose or objective of the 2016 Act which allows the Commission to take account of a number of considerations which are prescribed in s.8 of the 2016 Act.
42. It would also fetter the evaluative discretion conferred on the Commission by adopting an approach that the Commission *must* refuse to consider an application in the absence of an LAP. Again, an analogy can be drawn here with *Element Power v An Bord Pleanála* [2017] IEHC 550 where Haughton J. accepted (§70) the submission of the applicant that the Board's determination that the proposed development was premature pending the adoption of national and local wind energy strategies with a spatial dimension did represent a fettering of its discretion to determine whether the location of the proposed development was in accordance with proper planning and sustainable development in that area, citing *Carrigaline Community Television Broadcasting Co. Ltd. v Minister for Transport* [1997] 1 I.L.R.M. 241 and *McDonagh v Clare County Council* [2002] 2 I.R. 634.

43. Therefore, in summary, the Commission is entitled to take the view that the site of the proposed development remains zoned residential as there is nothing in the KCC Development Plan to the contrary. Furthermore, the fact that the Newbridge LAP has expired does not preclude the Commission from determining the application as the ultimate consideration in the 2016 Act is the question of whether the development is consistent with “proper planning and sustainable development” which is for the Commission to determine in the exercise of its evaluative expertise.

Housing Allocation

44. With regard to the second issue raised by the Commission, as stated in the DBCL opinion, the number of units permitted in the period since the adoption of the Kildare County development Plan is 200 and the remaining capacity is 861 units, noting the housing target of 1,061 units in Table 2.8 of the KCC Development Plan.

45. As explained in *Heather Hill Management Co. CLG v An Bord Pleanála* [2019] IEHC 450, the interpretation of a development plan is a question of law for the court. The rationale is predicated on the legal effect of a development plan and, in particular, the manner in which it acts as a fetter on the discretion of the Commission which enjoys a broad discretion in determining planning applications. The correct interpretation of a development plan is always a logically anterior question to the application of the plan’s objectives in the assessment of any particular development proposal. This point is illustrated by the judgment of the UK Supreme Court in *Tesco Stores Ltd. v. Dundee City Council* [2012] UKSC 13, which has been cited with approval by the High Court in *Navan Co-ownership v An Bord Pleanála* [2016] IEHC 181 and *Kelly v An Bord Pleanála* [2019] IEHC 84.

46. In my view, an objective interpretation of Table 2.8 of the KCC Development Plan clearly demonstrates that there is sufficient “headroom” within the remaining capacity and, therefore, the proposed development does not amount to a material contravention of the KCC Development Plan. As explained in the DBCL submission, the proposed development of 569 units will make a significant contribution to meeting that requirement. A grant of permission will bring the number of permitted units to 769. There will remain a shortfall of 292 units to meet the current statutory allocation requirement.

47. Accordingly, the proposed development is fully compliant with the Core Strategy and Table 2.8 of the KCC Development Plan.

Conclusion

48. In summary, the Commission is entitled to conclude that the site of the proposed development remains zoned residential as there is nothing in the KCC Development Plan to the contrary.

49. Furthermore, the fact that the Newbridge LAP has expired does not preclude the Commission from determining the application as the ultimate consideration in the 2016 Act is the question of whether the development is consistent with “proper planning and sustainable development” which is for the Commission to determine in the exercise of its evaluative expertise.

50. Furthermore, as a matter of law, the proposed development is fully compliant with the Core Strategy and Table 2.8 of the KCC Development Plan.

David Browne SC
20 August 2025