



An
Bord
Pleanála

Inspector's Report ABP-316400-23.

Type of Appeal	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
Location	Ballymacaula, Drumbiggle, Circular Road, Ennis, Co. Clare
Local Authority	Clare County Council.
Local Authority Reg. Ref.	S1/016
Appellant	Glenveagh Homes Ltd.
Inspector	Irené McCormack

1.0 Site Description

- 1.1. The site comprises c. 10.1ha. of lands within the settlement of Ennis, Co. Clare,

2.0 Zoning

- 2.1. The site was zoned Residential and Low Density Residential LDR 66 in the Ennis Settlement Map contained in Volume 3a Ennis Municipal District of the Clare County Development Plan 2017-2023.

Note: Clare County Development Plan 2023-2029 was adopted by the Elected Members of Clare County Council at a Special Planning Meeting on the 9th March 2023. The Plan came into effect 6 weeks from the date of adoption, on 20th April 2023.

- 2.2. CDP19.2 Development Plan Objective: Zoning of Lands. It is an objective of Clare County Council: *To ensure that sufficient lands are zoned at appropriate locations in the settlement plans and local area plans of the County, in accordance with the Core Strategy population targets, in order to meet the envisaged land use requirements of the area during the lifetime of this Development Plan.*
- 2.3. Section 2.5.2 of Volume 3a Ennis Municipal District of the Clare County Development Plan 2017-2023. States:

Site LDR66 Circular Road

Site LDR66 Circular Road Residential development on this site will be required to incorporate a buffer of sufficient width between the proposed development and the N85 to protect residential amenity. Development proposals on the site shall be accompanied by a flood risk assessment to ensure that floor levels are set to an appropriate height (1-in-100 year flood event plus climate change allowance and freeboard). A drainage impact assessment will also be required.

3.0 Planning History

- 3.1. Site

ABP 314448-22 (SHD) - Permission granted to Gleanveagh Homes Limited on 18/04/2023 for 289 no. residential units (265 no. houses and 24 no. apartments), creche and associated site work at Ballymacaula, Drumbiggle, Keelty, Circular Road, Ennis, Co. Clare

ABP 306088-19 (P 18-811): Permission granted for 99 residential units, ancillary surface car parking; provision of a crèche. Granted December 2020.

P. A. Reg, Ref. 06/2182/PL 221409: The planning authority decision, (Clare County Council) to grant permission for 147 dwellings, was overturned following third party appeals based on: (1) Premature development due to deficiencies in sewerage facilities, (2) serious injury to visual amenity due to a noise barrier, 2.5 m high to be erected on the boundary with the Western Relief Road and, (3) inadequate pedestrian connectivity between the site and the urban area.

P. A. Reg, Ref. 06/144/PL 221408: The planning authority decision, (Ennis Town Council) to grant permission for fifty houses and twenty eight apartments was overturned following third party appeals on the basis of (1) Premature development due to deficiencies in sewerage facilities, (2) inadequate pedestrian connectivity between the site and the urban area.

P. A. Reg. Ref. 04/2599 PL214836: The planning authority decision, (Clare County Council) to grant permission for 159 dwellings and a creche with living accommodation overhead was overturned following appeal based on reasoning that it would be prejudicial to public health because it was not demonstrated in the proposals for surface water collection, attenuation and disposal the development could be satisfactorily drained. There were some prior applications to Ennis Town Council or Clare County Council in respect of which a decision was not determined or were withdrawn by the applicant. (P. A. Reg. Refs 99/222 (PL 121236), 99/2373 and 04/2520 refer.)

P. A. Reg. Ref. 237/17 – PL 300590: Further to appeal permission was granted for a forty-two dwelling unit development on the adjoining lands to the south under construction at the time of inspection.

4.0 Submission to the Local Authority

- The lands are not serviced by footpath, lighting, and energy connections except via Third Party lands.
- Infrastructure upgrade required to public wastewater infrastructure.

5.0 Determination by the Local Authority

- 5.1. The local authority determined the site to be in scope and should remain on the map. The local authority consideration stated that land is zoned and located adjacent to existing residential development and the site has direct access to the R474 to the east and to the existing footpath and public lighting.
- 5.2. The assessment sets out that access can be obtained from the R474 via an access point c. 50m wide between existing residences. A land registry review determined that the access point is part of the same landholding as the subject lands and in the same ownership.
- 5.3. Uisce Eireann were consulted by the local authority and confirm an existing watermain along the public road c. 5m from the site and a public sewer c. 150m at the Drumbiggle Road/Caracalla Road junction. UE notes capacity at present for some development on the site, however upgrade works are likely to be required to cater for the development of c.330 units on the overall site.

6.0 The Appeal

6.1. Grounds of Appeal

- The appeal sets out that the lands do not meet the qualifying criteria set out in section 653B as the development is constrained by infrastructure requirements including footpath, lighting and energy that must be made through land owned by a Third Party but principally due to the fact the Irish Water has identified necessary upgrades to the WWTP.
- A portion of the site necessary to connect to a public footpath along with the installation of public lighting and necessary ESB infrastructure is in the

ownership of a Third Party (Woodhaven Development Limited). These works require Third Party consent.

- The Guidelines established that land “*must have access to or be connected to relevant services*”, The necessary upgrades to the WWTP are outside the control of the appellant demonstrating the lands should be determined “Out of Scope”.
- UE state that capacity exists at present for some development, based on the UE statement it is clear that the full extent of the site cannot be developed.

7.0 Assessment

- 7.1. The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, waste-water, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 iii) Services to be considered of the guidelines state that “*in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope*”.
- 7.2. Section 4.1.1 ii) Review of land with planning permission of the guidelines states that *where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope....Significant works by the applicant to undertake the development which are a part of the plans and particulars lodged as a part of the permitted development should be given careful consideration in light of Section 4.1.1.(iii) of these Guidelines.*
- 7.3. Of relevance, I note that the site has been the subject of a recent grant of planning permission ABP 314448-22 (SHD) - Permission granted to Gleanveagh Homes Limited on 18/04/2023 for 289 no. residential units. The grant of permission clearly

establishes that the site has the capacity to accommodate residential development. I have reviewed the conditions attached to this grant of planning permission and note there is no specific condition relating to wastewater constraints that would preclude development coming forward on the site.

- 7.4. Uisce Eireann have stated in their submission that water is available along the public road c. 5m from the site and public sewer connection is available c. 150m at the Drumbiggle Road/Caracalla Road junction. UE notes capacity at present for some development on the site, however upgrade works are likely to be required to cater for the development of c.330 units on the overall site. On this basis, it is reasonable to consider that there is some capacity in the wastewater network to cater for development.
- 7.5. This is consistent with the guidelines **Irish Water** Pg. 26 which state that where *“settlement capacity audit identifies a certain quantum of residential development availability in the treatment plants serving a settlement, all of the land which may be able to access the infrastructure should be considered in scope. Where development takes place and capacity no longer remains, then the annual review of the map should reflect this and lands may be removed from scope”*.
- 7.6. The appeal sets out that a portion of the site necessary to connect to a public footpath along with the installation of public lighting and necessary ESB infrastructure in is the ownership of a Third Party (Woodhaven Development Limited) and that these works require Third Party consent. I note, the lands in question occupy a small area to the southwest of the site adjacent to the N85. Whilst, this access would provide pedestrian connectivity to the N85 the development of the site is not reliant on same, a public footpath and public lighting exists along the R474 from which the site and the necessary infrastructure can be accessed.
- 7.7. Based on the information available I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B.
- 7.8. The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines.

8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

9.0 Reasons and Considerations

- 9.1. The site is part of an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The site does satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Irené McCormack
Senior Planning Inspector

21st June 2023