



An
Bord
Pleanála

Inspector's Report ABP-316424-23.

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 Map

Location

Lands at Killumney Ovens, Co. Cork

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT- 466046602

Appellant

Denis O'Brien Developments

Inspector

Emma Nevin

1.0 Site Description

- 1.1. The site comprises a parcel of land located to the southeast of the village centre in Killumney Ovens. The site, which is a green field site, is bound by a mix of uses, predominantly residential. The has a stated area of 7.51ha.

2.0 Zoning

- 2.1. The site is zoned under objective KO-R-03 'Medium (A) Residential Development', as per Volume 4 'South Cork' of the Cork County Development Plan 2022-2028.

3.0 Planning History

Ref: 206894 – Planning permission granted by the local authority and refused on appeal to An Bord Pleanála (ABP-310250-21) on 18th October 2021 for a development consisting of the construction of 72 no. dwelling houses, crèche and all associated development works including access, parking, footpaths, drainage, landscaping, and amenity areas. The development modified part of the residential development previously permitted under An Bord Pleanála Ref: 302638-18 (Cork County Council Ref: 17/7165) and included the same access arrangements as previously permitted.

The reasons of refusal included that the development would be premature by reference to the existing capacity deficiencies in the Killumney/Ovens wastewater treatment plant and stated that the primary discharge of the WWTP to River Bride, which flows into the River Lee and has hydrological connection to the Cork Harbour Special Protected Area (Site Code: 004030), and in the absence of the upgrade of the treatment plant it cannot definitively conclude that the proposed development would not have a significant negative impact on the Conservation Objectives of the European Site, and would therefore be contrary to the proper planning and sustainable development of the area.

Ref: 177165 – Conditional planning permission granted by the local authority with the decision to grant upheld on appeal to An Bord Pleanála (ABP-302638-18) on 25th February 2019 for a development consisting of the construction of 75 no. dwelling houses, 14 no. residential serviced sites, a crèche and all associated ancillary

development works including a roundabout at the entrance to the site at the junction of Killumney Road (L2216) and the Crossbarry Road (L2218); closure of existing vehicular entrance and provision of new vehicular entrance/access from new internal access road to serve the existing dwelling adjoining the eastern boundary of the site, parking, footpaths pedestrian crossings, lighting, foul and surface/storm water, drainage, landscaping and amenity areas.

4.0 Submission to the Local Authority

4.1. There are capacity deficiencies in Wastewater Treatment Plant in Killumney.

An Bord Pleanála Reference (PL04.310250) refused permission for a development of 72 dwellings on grounds that the development was premature pending the upgrade of the wastewater treatment plant in the surrounding area.

5.0 Determination by the Local Authority

5.1. A report was received from Uisce Éireann which confirms that:

- A watermain exists on the public road in close proximity to the site, GIS data indicates that a watermain is accessible 56 metres away, via the road L2215 Crossbarry Road, adjoining land parcel.
- A sewer exists on the public road, L2216 Killumney Road, in close proximity to the site. GIS data indicates that the watermain is accessible 143m away via the roads, L2218 Crossbarry Road adjoining the land parcel and via L2216 Killumney Road.
- As of 1st October 2022, while the Wastewater Treatment Plant Capacity Register indicates there is limited spare capacity in the Killumney WWPT, and the level of new connection enquiries to UE exceeds the available capacity at the plant and UE considers there is currently no further capacity for growth.
- Killumney WWPT has been nominated as a priority site under the Small Towns and Villages Growth Programme (STVGP), and UE is progressing a project under STVGP to provide capacity for projected growth.

- 5.2. The Council had full regard to infrastructural capacities relating to all submissions received in relation to its RZLT Draft Map, including referring submissions relating to water services to Uisce Eireann.
- 5.3. Regard is had to the RZLT Guidelines (page 7) which states; “In addition the land must be connected to or have access to public infrastructure and facilities necessary for dwelling to be developed and with sufficient service capacity available for such development”.
- 5.4. Regard is had to the RZLT Guidelines (page 8) which states; ‘*A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*’.
- 5.5. The site can connect to the water services network and spare capacity currently is available in the Killumney WWTP.
- 5.6. The Council is also aware that the existing spare capacity available in the Killumney WWTP is limited and will consider interim developer led on-site infrastructure provision that can connect to the network, pending additional treatment plant capacity being made available. As set out by Uisce Eireann, Killumney WWTP has been nominated as a priority site under the Small Towns and Villages Growth Programme and UE is progressing a project under that programme to provide capacity for projected growth.
- 5.7. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial Guidelines “Residential Zoned Land Tax – Guidelines for Planning Authorities’ for inclusion on the RZLT Map.

6.0 The Appeal

6.1 Grounds of Appeal

The appellant raised similar issues to those in the submission to the local authority including:

- The decision and evaluation by Cork County Council provides no meaningful assessment of the public infrastructure available to the site.

- A proper infrastructural assessment (in accordance with the RZLT criteria in Section 4.1.1 of the RZLT Guidelines) clearly demonstrates that the site does not have access to the required wastewater infrastructure for housing to be developed. If these lands were serviced, the appellant would already be developing housing on-site.
- An Bord Pleanála Reference (ABP-310250-21) refused permission for residential development on the grounds that there is insufficient wastewater treatment capacity in the Killumney/Ovens wastewater treatment plant.
- The appellant cannot secure permission for housing and therefore cannot be liable for the RZLT.
- Irish Water have the sole responsibility for the delivery of the necessary public wastewater infrastructure which is completely out of the appellant's control.
- There is no defined timeframe for the delivery of the required wastewater infrastructure for the area.
- Therefore, the lands should be excluded from the RZLT Map as the lands have yet to satisfy the criteria of Section 653(b) of the Taxes Consolidation Act, 1997, as amended.

7.0 **Assessment**

- 7.1. The Council stated that it had full regard to infrastructural capacities relating to all submissions received in relation to the RZLT Draft Map. It is also noted that the submission was referred to Uisce Eireann for consideration and comment.
- 7.2. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. It is noted that subject site is zoned 'Medium (A) Residential Development', as per Volume 4 'South Cork' of the Cork County Development Plan 2022-2028.
- 7.3. With respect to access to wastewater it is noted that Uisce Eireann confirmed, in their response to the RZLT query (dated 31st January 2023), that a sewer exists on the public road in close proximity to the site. Uisce Eireann has also confirmed that there is limited spare capacity in the Killumney WWTP. While the report references the level

of new connection enquiries submitted exceeds the capacity, it is noted that the Killumney WWTP has been nominated as a priority site under the STVGP and Uisce Eireann is progressing a project under the scheme to provide for projected growth.

- 7.4. I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states "*Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*".

As per the guidelines, a need for upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.5. It is also noted the Killumney WWTP (Ref. A0435) has a 'Green Status' on the Uisce Eireann Wastewater Treatment Capacity Register published in June 2023. Green status is stated to mean '*spare capacity available*'. It is also noted that a 'WWTP Project Planned/Underway'. As such there is capacity indicated.
- 7.6. The appellant also refers to the permission refused for residential development under ABP-310250-21 on the grounds of insufficient wastewater treatment capacity in the Killumney/Ovens wastewater treatment plant. While this is noted, the subject site has been zoned for residential development in the most recent County Development Plan.
- 7.7. Furthermore, the Council have stated that they will consider interim developer led on-site infrastructure provision that can connect to the existing network pending additional capacity being made available.
- 7.8. I also refer to the development permitted under Ref: 17/7165/An Bord Pleanála Ref: 302638-18, for residential dwellings and Section 4.1.1 (ii) of the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, which states "*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*", subject to lands being 'connected' or 'able to connect' to existing infrastructure.

- 7.9. Having regard to the most recent up to date information pertaining to the site including the local authority determination (report dated 16th May 2023) and the Uisce Eireann response to the RZLT query (report dated 31st January 2023), it is reasonable to consider that there is a viable wastewater connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of wastewater, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.10. In terms of water networks, a water main exists on the public road in close proximity to the site.
- 7.11. In my opinion there is a viable water supply/ connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.12. The responsibility for the delivery of upgrades to the wastewater treatment plant and the timeframe for the delivery of such works is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.13. As such, the lands are considered to be serviced for residential dwellings as per as per Section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as DRZLT- 466046602 on the map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that the lands are not capable of being serviced. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022. The lands as identified DRZLT- 466046602 are considered in scope of section 653B 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.

Emma Nevin
Planning Inspector

12th September 2023