



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316529-23

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**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**

Knocksedan Demesne, Naul Road, Brackenstown, Swords, Co. Dublin

**Local Authority**

Fingal County Council

**Local Authority Reg. Ref.**

RZLT060/22

**Appellant**

Marron Estates Ltd.

**Inspector**

Rachel Gleave O'Connor

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## 1.0 Site Location and Description

- 1.1. The site currently forms part of a wider land parcel for development. Areas of the site have been developed and are occupied by residential houses, while other parts of the site are under construction or currently vacant awaiting construction. It is bounded by a newly constructed residential estates to the north. The site can be accessed from streets serving these new houses to the north or via the R108 which defines its western edge. To the south east boundary of the site there is a private road.

## 2.0 Zoning and other provisions

- 2.1. The majority of the site is zoned RS – Residential under the Fingal County Development Plan 2023-2029, with the objective ‘Provide for residential development and protect and improve residential amenity’. A small portion of the north western corner of the site is zoned OS – Open Space with the objective ‘Provide for recreational and amenity resources for urban and rural populations subject to strict development controls. Only community facilities and other recreational uses will be considered and encouraged by the Planning Authority.’

## 3.0 Planning History

- 3.1. F06A/0347 – On 23<sup>rd</sup> July 2007 Final Planning Permission was Granted for 191 houses (comprising 38 No. four bedroom two storey semi-detached houses, 24 No. five bedroom two and half storey semi-detached houses, 98 No. four bedroom two storey detached houses, 30 No. five bedroom two storey detached houses and 1 No. two storey 217 sq.m. childcare facility Option Type F house), landscaping, siteworks, children's play area, ESB substation, new entrance feature with signage to Naul Road, demolition of existing and construction of new boundary treatments and the felling of trees (a number of which are included in the Brackenstown/Brazil Swords Tree Preservation Order). The area of the site is c. 16.38 Ha. (including 3.899 Ha parkland).
- 3.2. F09A/0008 – On 27<sup>th</sup> January 2010 Final Planning Permission Granted for (a) Permission for the change of 1 no. two storey detached House Type D on site no. 13

to amended 1 no. two storey detached house type D, (b) retention and completion during the course of construction of 1 no. amended two storey detached house Type A instead of 2 no. two and a half storey semi-detached house Type C on sites No. 21 & 22, (c) retention and completion during the course of construction of 2 No. amended two storey semi-detached House Types B instead of 2 No. two storey detached House Types E on sites No. 28 & 29 (d) retention and completion during the course of construction of 2 No. amended two and a half storey semi-detached House Types C instead of 2 No. two and a half storey semi-detached House Types C on sites No. 30 & 31, and (e) all associated site works, all as previously granted under planning file ref. F06A/0347.

- 3.3. F06A/0347/E1 – On 31<sup>st</sup> July 2012 Grant of Extension of Duration of Permission for F06A/0347.
- 3.4. F12A/0110 – On 28<sup>th</sup> August 2012 Final Planning Permission Granted for 5 no. revised two storey detached house types on sites 23-27 for which planning permission was previously granted under file ref. no. F06A/0347 and all associated site development works.
- 3.5. F13A/0128 – On 9<sup>th</sup> July 2013 Final Planning Permission Granted for Alterations to previously approved permission Reg. Ref. F06A/0347 on lands to the south and east of the Knocksedan Demesne residential development. The alterations consist of a revised two storey three bedroom house type at Site No's 61-64 Ashe Lane and 67 - 74 Ashe Grove; a revised two storey four bedroom house type at Site no's 53 - 58 Ashe Lane and 75 -82 Ashe Grove; Alterations to internal plot boundaries; and all associated and ancillary site development works necessary to facilitate the development. No increase overall unit numbers or alterations to the drainage or roads proposals approved under F06A/0347 are proposed.
- 3.6. F13A/0362 – On 23<sup>rd</sup> December 2013 Final Planning Permission for Alterations to previously approved permission Reg Ref F06A/0347 and Reg Ref F13A/0128. The alterations consist of the provision of 2 no. four bedroom two storey houses on the sites of house nos 59,60 (Ashe Lane) and 83 (Ahse Grove) and the provision of 2 no three bedroom two storey on the sites of house nos 65 and 66 (Ashe Grove) resulting in 5 no additional dwellings on the subject site. The development also include a new temporary playground site, alterations to internal plot boundaries and

all associated and ancillary site development works necessary to facilitate the development. No alterations to the drainage or roads proposals approved under F06A/0347 or F13A/0128 are proposed.

- 3.7. F15A/0037 – On 15<sup>th</sup> June 2015 Final Planning Permission for Alterations to previously approved permission Reg. Ref. F06A/0347 and Reg. Ref. F12A/0110 on lands to the south of the Knocksedan Demesne residential development. The alterations consist of: (i) the provision of revised elevational treatment only to approved (under Reg. Ref. F12A/0110), House No's 22,28,29,30 & 31. (ii) change of House Type at House No's 14-21 and 32-47 to provide a semi-detached four bedroom house type (with optional en-suite attic fifth bedroom and roof lights); (iii) provision of single storey detached pitched roofed garages to side of House No's 22,28,29,44,45,46 & 47. The development also includes: provision of solar PV panels to all dwellings; and all associated landscaping and ancillary site development works necessary to facilitate the development. No alterations to the drainage or public open space proposals approved under F06A/0347 of F12A/0110 are proposed.
- 3.8. F15A/0523 – On 25<sup>th</sup> May 2016 Final Planning Permission for Alterations to previously approved permission Reg. Ref. F06A/0347. The development consists of the provision of a bus stop on the north side of Usher Lane and a new link road approx. 20m. long from Knocksedan Drive to Usher Lane to serve the Bus Stop and road widening at the existing junction of Usher Lane onto Knocksedan Drive. Note that on 18<sup>th</sup> April 2016 the decision to grant by the LPA was appealed to ABP, and a decision to refuse Leave to Appeal was made by ABP on 19<sup>th</sup> May 2016.
- 3.9. F15A/0399 – On 23<sup>rd</sup> May 2016 Final Planning Permission Granted for Alterations to previously approved permission Reg. Ref. F06A/0347 on lands to the south of the Knocksedan Demesne residential development. The alterations consist of the erection of 8 no. revised two storey four bedroom semi-detached house type at Site No's 46-51 Belvedere Avenue and 2 no. revised two storey four bedroom semi-detached house type at site no. 52 Ashe Way, with alterations to internal plot boundaries, all associated and ancillary site development works necessary to facilitate the development. There is an additional increase of 3 houses in the overall unit numbers. There are no alterations to the drainage or public open space proposals approved under F06A/0347 proposed.

- 3.10. F16A/0287 – On 26<sup>th</sup> September 2016 Final Planning Permission Granted for (A) Alterations to previously approved permission Reg. Ref. F06A/0347. The alterations consist of the erection of 2 no. two storey four bedroom semi-detached house type at Site No. 34 Usher Park in lieu of a 5 bedroom detached house which was granted previously under File ref. no. F09A/0008 & F15A/0037 Usher Park with alterations to internal plot boundaries, all associated and ancillary site development works necessary to facilitate the development. There is an additional increase of 1 house in the overall unit numbers. There are no alterations to the drainage or roads proposals approved under F06A/0347 are proposed. (B) Retention permission for revised location of roadside boundary wall between the Naul Road and the site to the west of 34 Usher Park.
- 3.11. F17A/0003 – On 13<sup>th</sup> June 2017 Final Planning Permission Granted for Development consisting of alterations to previously approved development Reg. Ref. F06A/0347. The alterations consist of: (i) change of House Type at House Nos. 10-13 and 20-29 Belvedere Avenue to provide 14 no. semi-detached five-bedroom houses with photovoltaic panels on roof slopes (including optional rooflights and en-suite bedroom within the attic level roof space); (ii) change of House Type at House Nos. 1-18 Burnell Green to provide 18 no. semi-detached four bedroom house type with photovoltaic panels on front roof slopes (including optional rooflights and en-suite bedroom within the attic level roof space); (iii) change of House Type at House No. 9 Belvedere Avenue to provide for a detached five-bedroom house with photovoltaic panels on front roof slopes and rooflights; and all associated landscaping and ancillary site works necessary to facilitate the development. The proposal will not result in an increase in the number of units permitted under Reg. Ref. F06A/0347.
- 3.12. F06A/0347/E2 – On 30<sup>th</sup> November 2017 Grant of Extension of Duration of Permission for F06A/0347.
- 3.13. F20A/0309 – On 5<sup>th</sup> February 2021 Final Planning Permission Granted for Alterations to previously approved Reg. Ref. F06A/0347 (as extended under Reg. Refs F06A/0347/E1 and F06A/0347/E2. The development will consist of: (i) change of house types at 'Belvedere Green' to provide 14 no. semi-detached three-bedroom houses with photovoltaic panels on roof slopes (with additional option for rooflights and en-suite bedroom within the attic level roof space) and 1 no. detached three-bedroom house with photovoltaic panels on front roof slopes (with additional option

for rooflights and en-suite bedroom within the attic level roof space). (ii) change of house types at 'Belvedere Avenue' and 'Belvedere Way' to provide 18 no. semi-detached four-bedroom houses with photovoltaic panels on front roof slopes (with additional option for rooflights and en-suite bedroom with the attic level roof space) and 3 no. detached four-bedroom house with photovoltaic panels on front roof slopes (with additional option for rooflights and en-suite bedroom within the attic level roof space); and (iii) all associated landscaping and ancillary site works necessary to facilitate the development. The proposed development will result in an increase of 6 no. units from the previously permitted 30 no. units originally permitted within the application area under parent Reg. Ref. F06A/0347 (as extended under Reg. Refs. F06A/0347/E1 and F06A/0347/E2) to 36 no. units.

3.14. F20A/0309/E1 – On 22<sup>nd</sup> February 2022 Grant Extension of Duration of Permission.

3.15. F06A/0347/E3 – On 22<sup>nd</sup> February 2022 Grant Extension of Duration of Permission of F06A/0347, being a third extension of the life of the permission to 30<sup>th</sup> June 2023.

3.16. F22A/0571 – On 23<sup>rd</sup> March 2023 decision to Seek Clarification of Additional Info. For Alterations to previously approved Reg. Ref. F06A/0347 (as extended under Reg. Refs. F06A/0347/E1, F06A/0347/E2 and F06A/0347/E3). The development will consist of; (i) change of House Types at "Belvedere Walk" to provide 8 no. semi-detached, three-bedroom two-storey houses and 1 no detached three-bedroom, two-storey; (ii) change of House Types at "Belvedere View" to provide 12 no. semi-detached, four-bedroom, two-storey and 6 no. 2 bed semi-detached, two-bedroom, two-storey houses; (iii) change of House Types at "Belvedere Way" to provide 10 no. three-bed, semi-detached, two-storey dwellings); and (iv) all associated landscaping and ancillary site works necessary to facilitate the development. The proposed development will result in an increase of 9 no. units from the previously permitted 28 no. units originally permitted within this application areas under parent permission Reg. Ref. F06A/0347 (as extended under Reg. Refs. F06A/0347/E1, F06A/0347/E2 and F06A/0347/E3) to 37 no. units.

#### **4.0 Submission to the Local Authority**

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. The submission asserted that the lands are outside the

scope for application of the RZLT based on the fact that the subject site cannot be connected to waste water infrastructure in the short term due to prolonged consultation with public bodies including Irish Water and Fingal County Council which has yet to be concluded. As such, it is asserted that the site should be exempt from application of the RZLT based on Step 3 of the scoping criteria.

## **5.0 Determination by the Local Authority**

- 5.1. Uisce Eireann were consulted by the local authority and reported that the site was serviced for water supply. In relation to wastewater networks, Uisce Eireann stated that from available GIS records, a 450mm diameter sewer runs to along the road to the south east of the site and subject to scale of development upgrades or alternative solutions may be required and may involve 3<sup>rd</sup> party lands.
- 5.2. A copy of the connection agreement between the developer of the subject site and Uisce Eireann is included. This outlines that wastewater connection relies upon a pumping station that has not previously been taken in charge by the Local Authority and therefore does not form part of Uisce Eireann's network. An Alternative Solution for Wastewater discharges is identified as being advanced between "Irish Water", the Local Authority and the Developer, and comprises a new gravity fed discharge pipe(s) to be delivered at the expense of the developer. The installation of this gravity fed system would be through third-party lands, one part of which is owned by the Local Authority and the other is owned by a private third-party landowner. The connection agreement states that the Developer acknowledges that it has advanced discussions with the private third-party landowner.
- 5.3. As a result of the response from Uisce Eireann, the local authority considered the subject site to be in scope for the RZLT.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

- The fact that the site is zoned for a mixture of uses including residential use is not disputed.



- In relation to servicing (reason 2), the land is serviced with the exception of wastewater. Connection to wastewater services has been agreed with Irish Water pursuant to a 14no. month consultation period following an application for a connection agreement but, the developer has been unable to agree enabling wayleaves with Fingal County Council despite ongoing email correspondence.
- Planning permission F20A/0309 requires a connection agreement with Irish Water as a condition of the grant of consent. Special condition was attached by Irish Water to this connection agreement requiring securing of necessary third-party consents. The installation of pipes include a section through third-party lands. While the developer has negotiated a wayleave with the private party, it has not reached agreement with Fingal County Council for a wayleave through their lands.
- Whilst planning permission was approved in February 2021, the ability to exercise the permission (ref.F20A/0309) has been delayed by 14 no. months by Irish Water and subsequently remains restricted due to lack of confirmation from Fingal County Council as to the acceptability of a proposed wayleave arrangement.
- The fact that the site is not affected in terms of physical condition is not disputed, nor is that any exclusion under section 653B(c) applies.

## 7.0 **Assessment**

- 7.1. The appellant makes the case that due to protracted discussions with Uisce Eireann and Fingal County Council concerning wastewater connections, the site is not serviced and therefore exemption for inclusion in the RZLT map under section 653B(b) applies.
- 7.2. Both Uisce Eireann and the appellant acknowledge the connection agreement in place which identifies necessary works through third-party lands. The developer acknowledges they have agreed a wayleave through an area in private landownership and has contacted the Local Authority with respect to access through their publicly owned lands. The fact that the final agreement is outstanding does not preclude wastewater connections for the site. As such, the site can be serviced by

Uisce Eireann wastewater networks. While this requires works through third party lands, agreement to this work has been confirmed with respect to lands in private ownership. Securing a wayleave with the Local Authority remains outstanding but is a credible solution.

## **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. Having regard to the submitted appeal which raises a single matter with respect to wastewater, and with reference to Uisce Eireann's report and their connection agreement with the developer, it has been demonstrated that the site can be connected to wastewater networks.

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

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Rachel Gleave O'Connor  
Senior Planning Inspector

23<sup>rd</sup> May 2023