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Bord  
Pleanála

## Inspector's Report

### ABP-316541-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Whitestown Road, Rush, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	RZLT055/22
<b>Appellant(s)</b>	Milium Ventures Ltd.
<b>Inspector</b>	Rachel Gleave O'Connor

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## 1.0 Site Location and Description

- 1.1. The subject site is formed of an agricultural field, with Whitestown Road to the south and Old Road to the north. A small corner/grass verge is located to the south west and on the corner for Whitestown Road and Old Road, and one-off housing with associated garden areas is located to the north east of the site. The wider area is characterised by agricultural and residential uses.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned RS – Residential and within the defined Development Boundary for Rush under the Fingal County Development Plan 2023-2029. There is also a designated GDA Cycle Network along Whitestown Road.

## 3.0 Planning History

- 3.1. PA Reg. Ref. F23A/0024 / ABP Reg. Ref. 316316-23 – Current first party appeal against the Council’s decision to refuse permission on 21<sup>st</sup> March 2023 for (i) demolition of existing single-storey derelict cottage (c. 59sq.m) and associated outbuilding located within the eastern portion of the site; (ii) construction of a residential development consisting of 37 no. residential units including (iii) a total of 30 no. car parking spaces, together with 2 no. bicycle stores comprising a total of 86 no. cycle parking spaces. (iv) provision of landscaped open space; (v) provision of a new vehicular access off Old Road to the north, a new pedestrian access to Whitestown Road to the south, and public footpaths and shared surfaces; (vi) drainage works including the provision of a new foul pump station on site; (vi) landscaping and boundary treatments, open space, foul and surface water drainage, bin stores, lighting, infrastructural works, and all associated ancillary works necessary to facilitate the proposed development.
- 3.2. Permission refused for 4 reasons summarised here. Firstly in relation to layout and design specifically relating to proposed 3 storey duplex blocks; secondly in relation to the location at the entry point to Rush to the north of a Highly Sensitive Landscape, its design and siting would be injurious to visual amenities in the area; Thirdly in relation to substandard open space which includes a foul pumping station; and

fourthly in relation to the proposed foul pumping station within approx. 31m of proposed residential units and therefore materially in contravention with objective WT12 of the Fingal Development Plan 2017-2023. Dated 21<sup>st</sup> March 2023.

- 3.3. PA Reg. Ref. F96A/0222 / ABP Reg. Ref. 06F.099348 – Permission refused on appeal for outline consent for petrol service station, workshop, showroom, pump islands, canopy, office shop, underground tanks, septic tank, car wash and ancillary works. Dated 30<sup>th</sup> May 1996.

#### **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 stated that a connection to the existing wastewater network for the surrounding area is not currently possible without significant upgrade works. It has been confirmed by Irish Water that the required extension works to facilitate a connection are not currently on the Irish Water investment plan. In addition, there is currently no existing footpath infrastructure serving the northern portion of the subject lands which front Old Road, nor is there an existing public footpath network along Old Road. Thus, substantial sections of new footpath infrastructure would be required to facilitate active travel to and from the submission lands.
- 4.2. The submission states that the site is representative of 'vacant or idle' land in the context that its only use is as passive agricultural lands.
- 4.3. Irish Water have indicated that a pumping station and associated rising main would need to be provided on site as a gravity connection may not be achievable.
- 4.4. It is premature to include the submission lands on the draft maps given the array of supporting infrastructure that would need to be provided, at the expense of the developer, to facilitate the development.
- 4.5. With reference to Objective WT12 under the Fingal Development Plan 2017-2023 requiring a minimum 35m-50m buffer zone to pumping stations, the potential inclusion of a pumping station on the site and the significant separation required, makes the achievement of required density of 35-50uph under the Sustainable Residential Development in Urban Areas Guidelines difficult.

## 5.0 Determination by the Local Authority

- 5.1. Uisce Éireann confirm that the site is serviceable for water networks, the nearest watermain is on Old Road at the northwest boundary. In relation to wastewater, GIS indicates this area does not have a sewer. A network expansion would be required and will depend on topography. Pumping may be required.
- 5.2. The local planning authority stated that it is noted that there are existing footpaths along the R128 fronting the site. There are no footpaths along the Old Road to the northern site boundary. It is considered that any development on site could access the footpaths located to the front of the site along the R128.
- 5.3. The lands in question are included in a development plan or local area plan and are zoned for residential development or zoned for a mixture of uses, that includes residential development. The land is also serviced, or it is reasonable to consider may have access to services.
- 5.4. The local authority determined that the site was in scope and should remain on the map.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Planning application Reg. Ref. F23A/0024 was refused for 4 reasons by the Council, with concern that infrastructure and services, namely the proposed foul pumping station, would be within approximately 31m of proposed residential units and would therefore materially contravene Objective WT12 of the Fingal Development Plan 2017-2023. As there was a clear attempt to activate these lands through a residential development but was refused inclusive of services issues, the reason for retaining the subject lands on the RZLT maps is refuted.
- The subject site's northern and southern frontages along Old Road and Whitestown Road are currently not serviced by an existing public footpath network. Infrastructure is not available to serve the site.
- Submission to the Council included in appendix B of the appeal.

## 7.0 Assessment

- 7.1. I note that the submission to the Council suggested that the lands are ‘vacant or idle’. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned ‘(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use’ but not land ‘(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.’ The land is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply. In any case, the land is also in operational agricultural use. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.
- 7.2. With respect to the appeal grounds and the lack of water infrastructure to serve the site, I note that Uisce Éireann confirm water supply networks in the vicinity of the site which could serve development of the site. I also note that with respect of wastewater, it is stated that a pumping station may be required. With this in mind, I note the recent planning application on the site (PA Reg. Ref. F23A/0024) currently subject to appeal (ABP Reg. Ref. 316316-23).
- 7.3. While Objective WT12 under the Fingal Development Plan 2017-2023 no longer applies with the adoption of the current Fingal County Development Plan 2023-2029, I note Objective IUO7 under that current plan which states the following:
- “Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise. For small scale developments (less than 15 houses) a smaller buffer zone may be agreed with the Planning Authority.”*
- 7.4. There is no reason why a proposal could not be developed for the site that fulfilled this criteria, and this is informed by the application recently refused by the Council that had proposed housing circa 31m away from a proposed pumping station, and therefore this buffer would only need to be increased by circa 4m to achieve this requirement under the plan. I recognise that development of the land would have to balance a number of requirements in the provision of a pumping station on the site

and compatibility with open space requirements, buffer zones etc. but there are no constraints over the site which would hinder the possibility of achieving these requirements with the right scheme. Therefore, the provision of water infrastructure to serve the site is possible and within the control of the applicant and/or over public lands, in agreement with Uisce Éireann. As such, no exemption applies under the Act with regard to this matter.

- 7.5. With respect to footpath infrastructure to serve the site, I note that existing footpath infrastructure exists on Whitestown Road to the south of the site. As such, the subject site would be considered in-scope in this regard.

## **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 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 section 3.1.2 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site is considered in scope for the purposes of the RZLT map.

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

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6 June 2023