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Bord  
Pleanála

## Inspector's Report ABP-316610-23

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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 Map
<b>Location</b>	Ballycarnane, Tramore, Co. Waterford
<b>Local Authority</b>	Waterford and City County Council
<b>Local Authority Reg. Ref.</b>	WFD-C15-62
<b>Appellant(s)</b>	Middlethird Estates Limited
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site is located on the west side of the R675 Regional Road Newtown Glen Road, c. 830 metres to the north-west of the centre of Tramore. The site includes of a number of agricultural type structures, hard standing areas and open storage of building materials/ equipment. The balance of the site remains undeveloped. The site has an estimated site area of c. 0.62 hectares.

## 2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'RS - Existing Residential' in the Waterford City and County Development Plan 2022 to 2028. The relevant zoning objective is *'Provide for residential development and protect and improve residential amenity.'*

## 3.0 Planning History

- 3.1. Planning History for the subject site (s)
- 3.2. 2360258: Middlethird Estates Limited. Permission for 25 no. dwellings. A decision is due on 13/08/2023.
- 3.3. 2360251: Middlethird Estates Limited. INCOMPLETE APPLICATION.
- 3.4. 97242: Mr James Parkinson. Permission for the Construction of a New Entrance. Decision not specified on ePlan Planning Register.

## 4.0 Submission to the Local Authority

- 4.1. The Appellants made a submission to the Local Authority seeking to have their land removed from the draft map.
- 4.2. The following is a summary of the submission:
- The property is zoned 'Existing Residential' in the current Development Plan.
  - The permitted and current use of the property is a commercial builder's yard, although the level of use has significantly decreased since being acquired by McDonald and Sons (Builders) in 2022.

- The property lies within the original curtilage of Ballycarnane House, which likely accounts for its historic residential zoning, notwithstanding the existing and permission commercial use.
- Being land that is technically within the curtilage of an existing residential dwelling that is subject of the Local Property Tax, it may not be liable to RZLT.
- The Applicant is in current discussions with the Council regarding possible housing development on the site. This will involve establishing the suitability of access and services. The Appellant states that it is understood the development of the housing units cannot be accommodated without an upgrade of public sewers outside the site.
- Consideration for the inclusion of the site in the RZLT map detached from the curtilage of Ballycarnane House would be premature until independent servicing of the lands can be confirmed.
- Confirmation is requested that the property will not be the subject of RZLT and that it will be removed from the RZLT map.

## 5.0 Determination by the Local Authority

5.1. Having evaluated the submission and all relevant information relating to the land(s), it is considered that the land(s) DOES satisfy the qualifying criteria as per Section 653E (1) (a) (ii) (I) of the Finance Act 2021, as amended, for the reasons set out below, and therefore it is recommended that the land(s) at the above location should be INCLUDED in the final map.

5.2. Reasons

5.3. 1. The lands have been assessed in a manner consistent to Appendix 4 & 5 of the *Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022)*, as amended, and are duly considered to be in-scope for the tax.

5.4. 2. The lands are zoned for residential development where a residential use is permitted on principle in the development plan.

- 5.5. 3. The lands have access to services including, water supply, foul and surface water sewers, roads, footpaths and public lighting and there is sufficient capacity to accommodate development of the lands.
- 5.6. 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

- Item 1: The Appellant states that they have been in discussions with the Council regarding possible housing development on the site. This involved establishing the suitability of access and services. The Appellant states that it is understood the development of the housing units cannot be accommodated without an upgrade of public sewers outside the site.
- The conclusions reached by the Local Authority in their Evaluation Report in respect of the feasibility of the lands to connect to roads, footpaths and public lighting and public wastewater services is disputed by the Appellant. The Appellant refers to the Guidelines wherein the Local Authority is required to obtain information from stakeholders such as Irish Water and Roads in identifying 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 the date was after 1 January 2022. The Appellant states that there is no evidence in the Council's assessment that there was any communication with Irish Water or its Roads Section.
- The Appellant refers to a definition of Serviced land as per the Revenue Guidelines Tax and Duty Manual, Part 22A-01-01- Guidance on the Residential Zoned Land Tax – Part 22A-01-01, Part 22A of the Taxes Consolidation Act 1997 and the definition in 'Residential Zoned Land Tax – Your Questions Answered, DHLGH 2022. The definition provided by the Appellant is states as *'having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for*

*which there is service capacity available sufficient to enable housing to be developed. Only when land is zoned for residential use and has access to necessary infrastructural services to allow for development to proceed that it is within the scope of the tax.'*

- The Appellant states that there is no evidence in the Council's Assessment that all the necessary services are available for the land to be developed or that access can be obtained without upgrades of the public road, which may be outside the control of the owner.
- Item 2: The Appellant states that for the inclusion of the site in the RZLT map detached from the curtilage of Ballycarnane House would be premature until independent servicing of the lands can be confirmed.
- Item 3: The Appellant considers that in the evaluation Report of the Local Authority they have incorrectly stated that there is no trade or profession operating on the site and that this was detailed in the submission.
- The Appellant requests the Board to uphold the appeal and determine that the subject site should be excluded from the final RZLT map of lands to be subject of the tax.

## 7.0 **Assessment**

7.1. The comments raised in the appeal are noted.

7.2. Uisce Eireann, as per the email dated 14/02/2023, confirm the following in respect of WFD-C15-62 (Parcel ID WDLA0008726):

- a. The site(s) in question are generally in built up areas and would all be in close proximity to water and waste water infrastructure either in the public domain or within the sites currently under development in a phased approach.
- b. The submission made by the agent does not make specific reference to the absence of public water services infrastructure in his appeals.

- 7.3. I am satisfied that there is a viable water supply/ connection available and a viable wastewater connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of water supply and wastewater.
- 7.4. I am satisfied that the lands are accessible in terms of both pedestrian and vehicular access.
- 7.5. I am satisfied that the site does not meet the provisions of Section 653B c) i) in terms of a trade or profession being carried on at the site. Similarly, there is no indication that the site is liable to commercial rates nor can it be considered to qualify as a use which provides services to residents of adjacent residential areas.

## **8.0 Conclusion**

- 8.1. The site is within 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.

## **9.0 Recommendation**

- 9.1. I recommend that the Board confirm the determination of the Local Authority and that the indicated site be retained on the map.

## **10.0 Reasons and Considerations**

- 10.1. The lands identified as WFD-C15-62 (RZLT Map Parcel ID WDLA0008726), meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.
- 10.2. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.3. There is existing available Water and Wastewater infrastructure proximate to the subject lands and no capacity or supply issues have been raised by Uisce Eireann.
- 10.4. I am satisfied that the lands are accessible in terms of both pedestrian and vehicular access.

10.5. 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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Frank O'Donnell  
Planning Inspector

3<sup>rd</sup> August 2023