



An
Bord
Pleanála

Inspector's Report ABP-316613-23

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

Newtown House, Tramore, Co. Waterford

Local Authority

Waterford and City County Council

Local Authority Reg. Ref.

WFD-C15-64

Appellant(s)

Middlethird Estates Limited

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the east side of the Newtown Glen Road, c. 1.7 km south-west of the centre of Tramore. The site is adjacent to the immediate south-west of an adjacent established housing development at Carrigeenlea. The site which is the subject of this appeal has an estimated site area of c. 5.93 hectares. The lands are accessed via an existing agricultural entrance close to the northern site boundary. There is an existing access lane along the northern site boundary which serves an existing agricultural type building/ shed with associated paddocks located in the northern corner of the holding.

2.0 Zoning and other provisions

- 2.1. The site comprises of 2 no. land parcels, as follows:
- Land Parcel ID: WDLA00028956: Estimated site area of 5.21 hectares.
 - Land Parcel ID: WDLA00028947: Estimated site area of 0.72 hectares.
- 2.2. The northern portion of the overall site is zoned 'R1 – New Residential', (Residential Phase 1) in the Waterford City and County Development Plan 2022 to 2028. The relevant zoning objective is *'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'*
- 2.3. The remaining southern portion of the overall subject site is also zoned 'R1 New Residential' but is identified as Residential Phase 2.
- 2.4. As per the Zoning Matrix (Table 11.2) set out in Section 11.0 Zoning and Land Use of Volume 2 - Development Management Standards, a Dwelling / Principal Private Residence and a Residential scheme are identified as uses which are 'Permitted in Principle' on lands zoned R1 (New Residential).
- 2.5. In respect of the Tiered Approach to Zoning, the following is stated in Section 2.11.2 of the Waterford City and County Development Plan, 2022 to 2028, Volume 1 - Written Statement in relation to lands identified as Residential Phase 2:

'The method of land use zoning employed in this Development Plan focuses on delivering the strategic outcomes and priorities of the NPF for Waterford City and County. The approach taken considers the provisions of NPO 72(a), (b) &

(c) of the NPF4, paying particular attention to the infrastructural services available, thereby adopting a Tier 1 and Tier 2 approach to the release of land for residential development during the life of the plan. This has avoided the inappropriate zoning of land for development where such land cannot be serviced during the life of the plan. Appendix 14 of the Development Plan sets out the notional cost of addressing infrastructural deficits which will be required to be addressed prior to Tier 2 lands being available for development during the life of this Development Plan.

Section 6 and SPPR DPG 7 of the consultation draft Development Plans: Guidelines for Planning Authorities (August 2021) identifies how lands which are suitable for residential development can be tiered/ phased or prioritised in the Development Plan. This sequential approach develops further the Tiered Approach to Zoning and gives due cognisance to the principles of compact growth and utilisation of existing infrastructure as set out in the NPF and RSES.

In a manner consistent with SPPR DPG 7, the new residential land use zoning (R1 GZT) provisions of the Plan are defined as either phase 1 or phase 2 lands as per the series of maps below. Generally, save for the phase 2 lands identified in the maps, all other R1 zoned lands can be taken as being phase 1.

In addition to the provisions of the Guidelines and the sequential approach to development, the phasing approach set out in the Plan also takes cognisance of the unique pattern of land ownership across our larger urban settlements, the likelihood of development lands coming to market, the availability of services and development activity in the area. The phasing approach seeks to ensure that development on larger land holdings follows a sequential pattern and in this regard the following should be noted:

- All lands zoned for new residential development (R1) are considered to be developable during the lifetime of the Development Plan.*
- R1 zoned lands not specifically identified as phase 2 shall be considered phase 1.*
- Within any landholding all phase 1 lands shall be developed or committed to development prior to any development being proposed/permitted on phase 2 lands within that landholding.*

- *All planning applications for development on phase 2 lands shall be supported by documentation to clearly identify that phase 1 lands within the landholding have been developed out, are committed to development and that the implementation of any such permitted development is imminent, or that phase 1 lands are not available within the landholding.'*

- 2.6. Appendix 17 of the Waterford City and County Development Plan, 2022 to 2028 relates to a Tiered Approach to Zoning. This includes a site-specific Infrastructure Assessment for subject lands.
- 2.7. The southern portion of the lands zoned 'R1 - New Residential' Residential Phase 2 is identified as Site 1 (Newtown), see Table 6B: Tramore Phase 2 Site-Specific Infrastructure Assessment. The northern portion of the lands zoned 'R1 - New Residential' Residential Phase 1 is identified as Site 2 (Newtown), see Table 6A: Tramore Phase 2 Site-Specific Infrastructure Assessment. Both Site 1 (Newtown) and Site 2 (Newtown) score 1¹ in relation to Roads, Footpath, Water Supply and Wastewater. It is also indicated that both sites do not qualify as locations requiring Compact Growth² or where Public Transport³ is available.

3.0 Planning History

- 3.1. Planning History for the subject site (s)
- 3.2. 22398: Middlethird Estates Limited. Permission for 62 no. residential units (including 2 no. apartment blocks of 11 no. units each) and 1 no. creche. Permission was GRANTED on 08/03/2023 subject to 24 no. conditions.
- 3.3. 13149: Middlethird Estates Ltd. EXTENSION OF DURATION of 061451. WITHDRAWN on 11/06/2013.

¹ Score 1: Existing infrastructure can support the development of the site, subject to on-site works, some minor works at access points or linking into available existing systems. Score 2: Some off-site works are required but could be delivered as part of a planning application to develop the site or capital investment is identified to facilitate development over the course of the plan.

² Compact Growth: Proximity to the town centre and services – distance of no more than 1km or 5 min walk from the town and neighbourhood centre is desirable.

³ Public Transport: Whether public transport modes are available within proximity of the site or connected walking & cycle routes provide easy access to public transport and services.

- 3.4. 13100: Middlethird Estates Ltd. EXTENSION OF DURATION of 061451. EOD GRANTED on 09/05/2013 subject to 3 no. conditions.
- 3.5. 07688: Middlethird Estates Ltd (Appeal Ref. No. PL24. 224502). Permission for the Construction of two three-storey apartment blocks (total 22 units) within development currently under consideration under planning register reference number 06/1451 and associated site works. Permission was GRANTED on 25/04/2008.
- 3.6. 061451 (Appeal Ref. No. PL 24.224882): Middlethird Estates Ltd. Permission for 142 no. dwellings and a creche. Permission GRANTED on 25/04/2008 subject to 16 no. conditions.

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 'New Residential' in the current Development Plan. There is Phase 1 'New Residential' zoning to the north and Phase 2 'New Residential' zoning to the south.
 - There is a current planning application ref: 22/398 for the development of 58 houses and a creche on part of the site (on the Phase 1 lands).
 - Until a planning permission is granted, the Phase 2 land cannot be considered, serviced and developed. The timeframe for a grant of planning permission will be determined by the timeframe for the Council to determine the current application and whether there is an appeal to An Bord Pleanála. As the council will be aware, appeals are currently taking in excess of 12 months to determine.
 - The owner is currently developing housing elsewhere in the vicinity (planning permission refs: 11/383 (ABP re: PL24.241034 as extended under 18/8, and 21/836) which is scheduled to be completed in 2024. On completion, it would be the owner's intention to commence developing the Tramore House site, subject to planning. There is no intention to leave the site 'vacant or idle'. If development does not commence following completion of permissions, 11/383 and 21/836 it will be as a result of delays in the planning process which will

hinder the delivery of servicing and the building of houses and not as a result of the applicant's lack of efforts to develop.

- In conclusion it is considered that the lands are not 'idle', will not be serviceable until planning permission is granted, and the balance of the land is outside the site of current planning application ref: 22/398 cannot be considered, serviced and developed until phase 1 is permitted and developed.
- 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

The following is a summary of the background presented in this appeal.

- The property is zoned 'New Residential' in the current Development Plan. There is Phase 1 'New Residential' zoning to the north and Phase 2 'New Residential' zoning to the south.
- The development of Phase 2 'New Residential' land is dependent on the prior development of Phase 1 'New Residential' land.
- On the 8/03/2023, planning application ref: 22/398 was granted for the development of 61 houses and a creche on part of the site (on Phase 1 lands).
- Until these houses are developed, the Phase 2 land cannot be considered serviceable and developable.
- The owner is currently developing housing elsewhere in the vicinity (planning permission refs: 11/383 (ABP re: PL24.241034 as extended under 18/8, and 21/836) which is scheduled to be completed in 2024. On completion, it would be the owner's intention to commence developing the Tramore House site.

The Grounds of Appeal are summarised as follows:

- Item 1: In its assessment the Council failed to have regard to the important distinction between Phase 1 'New Residential' zoning to the north of the overall site and Phase 2 'New Residential' zoning to the south.
- Until the permitted houses on Phase 1 land is developed, the Phase 2 land cannot be considered, serviceable and developable.
- Item 2: The Evaluation Report by the Local Authority, ref. WFD-C15-64 in respect of the subject lands states that the lands can be connected or are able to be connected to roads, footpaths, public lighting, surface water, wastewater and water supply wastewater services.
- The Appellant references the Guidelines and states that for inclusion onto the RZLT map, the Council 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. There is no evidence in the Council's assessment that there was any communication with its Roads section or Irish Water to confirm its findings.

- Having failed to distinguish between Phase 1 'New Residential' zoning to the north of the overall site and Phase 2 'New Residential' zoning to the south, it is not possible to confirm whether its assessment related to part or all of the lands. Clearly, the Phase 2 land cannot be considered, serviceable and deliverable before the Phase 1 New Residential zoned lands are developed.
- 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 in the absence of any evidence from the Councils Roads Section and Irish Water, it is not possible to confirm whether the overall site is serviceable and developable. Whilst the granting of permission 22/398 suggests phase 1 zoned lands may be, their development is dependent on connection agreements with Irish Water (see Condition 5 of the permission).

7.0 Assessment

- 7.1. The comments raised in the appeal are noted.
- 7.2. Planning permission was granted on 08/03/2023, predominantly on the northern portion of the subject site, for the development of 61 houses and a creche, see planning reg. ref. no. 22398. The permitted site location map, received by the Planning Authority in response to a request for further information on 22/12/2022, extends into the Residential Phase 2 lands and lands further to the east at Carrigeen Lea/ Cliff Road, to accommodate stormwater and wastewater connections. The site layout plan lodged in response to the request for further information includes residential development on Phase 2 lands. The site layout plan/ proposed future development, Ref. P1.2, lodged in response to the request for further information, shows an indicative site layout for the future development of the overall holding including lands zoned 'SRR – Residential: Strategic Reserve' further to the south.
- 7.3. Having regard to the recently permitted development on the site and as per guidance presented in Section 2.11.2 of the Development Plan and following the principles of sequential orderly development, I am satisfied that it is reasonable to consider that the R1 – New Residential Phase 2 element of the overall site cannot be reasonably developed until such time as the Phase 1 lands on the same holding are either developed or committed to development. It is my opinion therefore that the R1 – New Residential Phase 2 elements of the subject landholding should be excluded from scope.
- 7.4. The Site-Specific Infrastructure Assessments for the subject lands, presented in Appendix 17 of the Plan, raise no impediment as to the feasibility of residential development on both the Phase 1 and indeed the Phase 2 elements in terms of Roads, Footpath, Water Supply and Wastewater.
- 7.5. Uisce Eireann, as per the email dated 14/02/2023, refer to WFD-C15-64 (Land Parcel ID: WDLA00028956) and state the following:
- A) the sites 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 on 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.

- 7.6. The Local Authority has decided to include both the Residential Phase 1 and the Residential Phase 2 lands within the scope of the RZLT.
- 7.7. It is noted the Tramore (East Waterford Water Supply Scheme) (WRZ ID: 3100SC0033) is stated to have Capacity Available – LoS improvement required (Capacity Available – LoS improvement required means ‘*Capacity Available to meet 2032 population targets - Level of service (LoS) improvement required. Leakage reduction and/or capital investment will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process*’).
- 7.8. It is considered therefore that there is a viable water supply/ connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of water supply.
- 7.9. It is noted the Tramore Wastewater Treatment Plant (WWTP) (Ref. D0015) has a Green status on the Uisce Eireann Wastewater Treatment Capacity Register. Green status is stated to mean that there is spare capacity available.
- 7.10. It is considered therefore that there is a viable wastewater connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of wastewater.

8.0 Conclusion

- 8.1. The northern portion of the site zoned ‘R1 New Residential (Residential Phase 2)’ satisfies the criterion for exclusion from the map set out in Section 653B(c) v) of the Taxes Consolidation Act 1997, as amended.
- 8.2. The southern portion of the site zoned ‘R1 New Residential (Residential Phase 1)’ satisfies 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 set aside the determination of the Local Authority in respect of the parts of the lands which are zoned 'R1 New Residential (Residential Phase 2) and that this part of the Land Parcel ID WDLA00028956 and the entirety of Land Parcel ID WDLA00028947 be removed from the map.
- 9.2. I recommend that the Board confirms the determination of the Local Authority in respect of the parts of the lands which are zoned 'R1 New Residential (Residential Phase 1) and that this part of the Land Parcel ID WDLA00028956 be included on the map.

10.0 Reasons and Considerations

- 10.1. The portion lands identified as WFD-C15-64 (Land Parcel IDs WDLA00028956 and the entirety of Land Parcel ID WDLA00028947) which are zoned 'R1 New Residential (Residential Phase 2) do not fall within the scope of Section 653B c) v) of the Act and should therefore be excluded from the map.
- 10.2. The remainder of the lands identified as WFD-C15-64 (Land Parcel IDs WDLA00028956 and the entirety of Land Parcel ID WDLA00028947) which are zoned 'R1 New Residential (Residential Phase 1) meet the qualifying criteria for inclusion on the map as set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and should therefore be included on the map.
- 10.3. 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.

Frank O'Donnell
Planning Inspector

31st August 2023