



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316722-23

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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>	Dunmanway North, Dunmanway, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	DRZLT474516873
<b>Appellant(s)</b>	Cahalane Brothers Ltd
<b>Inspector</b>	Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The subject site is situated north of the R586, separated to that road by other land parcels. To the west the site is separated to Saint Mary's Road by other land parcels. To the south east of the site is the former St. Mary's Convent. To the north of the site lands have an agricultural character, whilst further to the south of the site there are residential and mixed uses for the town.

## 2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'Residential' 'Parcel ID: DY-RA-02' under the Cork County Development Plan 2022-2028. Parcel ID: DY-RA-02 has the following objective under the Development Plan:

*"Medium B Density Residential Development. Development to include the provision of the Northern Relief Road (U-01), provision for safe pedestrian/cycleway access to the town centre. Comprehensive landscaping proposals will be required, and these should seek to link with other green infrastructure assets in the area, with SuDs proposals for the site, and should seek to retain mature hedgerows as they form a link from the open countryside to mature woodland within the adjoining convent site."*

## 3.0 Planning History

- 3.1. No relevant planning history on the subject site itself.
- 3.2. Other relevant sites:
- 3.3. Ros Geal:- Planning Reg. Ref. 20/212 – Planning Permission REFUSED on 14<sup>th</sup> July 2020 by Cork County Council for 24 no. dwelling houses. Permission refused for two reasons as follows:
1. The proposed development, by reason of a proposed connection into the public wastewater system serving the town of Dunmanway, would materially contravene Objective DY-GO02 of the West Cork Municipal District Local Area Plan 2017 which states that new developments requiring a connection to the Dunmanway Wastewater Treatment Plant will not be permitted until necessary infrastructural upgrades to the wastewater infrastructure are in

place in order to ensure compatibility with Water Framework Directive and Habitats Directive requirements. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development requires a connection to the Dunmanway Wastewater Treatment Plant and associated pumping station, which by reason of its location upstream of qualifying species within the Bandon River Special Area of Conservation would hinder the achievement of the Conservation Objective for the Freshwater Pearl Mussel and thereby affect the integrity of the Bandon River Special Area of Conservation. The proposed development would, therefore, contravene materially Objective HE 2-2 of the Cork County Development Plan 2014 which seeks to provide protection to protected plants and animal species and as such would be contrary to the proper planning and sustainable development of the area.

#### **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. It stated that:

- Reference to section 2.9.37 of Volume 5 'West Cork' in the County Development Plan 2022-2028 which states that new developments requiring a connection to the Dunmanway WWTP will not be permitted until infrastructural upgrades are in place. This means that the section of land cannot be developed and as such should not be liable to the zoned tax.
- The landowner does not request that the lands be de-zoned but that no tax be applied, as it is not possible to develop the lands or apply for planning permission to carry out development until such time as the matters set out in the County Development Plan are addressed and these are at present outside the control of the landowner.

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

- 5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- Uisce Éireann confirmed availability of water and wastewater network. Limited capacity is available in WWT and capable of achieving Urban WWT Directive standards.
- Response from Uisce Éireann. Confirms with respect to water networks, that a water main exists in close proximity to the site, accessible 260m away via third party lands. With respect to wastewater, a sewer exists on the public road, Saint Mary's Road 475m away via third party lands. With respect to capacity, the latest wastewater treatment capacity register, issued in 2022, indicated that limited spare capacity currently exists in the Dunmanway Wastewater Treatment Plant (WWTP). The WWTP is currently not compliant with its license limits but is capable of achieving at least Urban Wastewater Treatment Directive standards. Potential availability of capacity would be dependent on any additional load not resulting in a significant breach of the combined approach as set out in Regulation 43 of the Waste Water Discharge (Authorisation) Regulations 2007, which is a matter for the Planning Authority to consider.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- Reference to decision by Cork County Council to refuse permission for a residential development of 24no. units (Reg. Ref. 20/212) at Ros Gael to the south of the site on 14<sup>th</sup> July 2020 for 2 reasons. Firstly relating to a proposed connection to the wastewater system serving Dunmanway which would materially contravene Objective DY-GO02 of the West Cork Municipal District Local Area Plan 2017 which states that new developments requiring a connection to the Dunmanway Wastewater Treatment Plant will not be permitted until necessary infrastructural upgrades are in place. Secondly relating to the connection to the Dunmanway WWTP and associated pumping station, which by reason of its location upstream of qualifying species within the Brandon River SAC would affect the integrity of the SAC, in material contravention of Objective HE 2-2.

- Reference to sections 2.9.9, 2.9.36 and 2.9.37 of the CDP (Volume 5 West Cork) which refer to the Dunmanway WWTP.
- Appendix D (table D2) of the CDP outlines that wastewater network upgrades are required in Dunmanway to support the delivery of land zoned for development.
- Until the wastewater network upgrades in Dunmanway are completed and fully operational, the subject lands do not have access to adequate infrastructure, and residential development on the lands is not yet deliverable. This is reflected in CDP Objective DY-GO-02.
- Note CDP Objectives WM 11-1 and WM 11-9 which relate to wastewater treatment and the Habitats Directive.
- The construction of the northern relief road will also be materially significant and require works across other landholdings.

## 7.0 Local Authority Response

- Reference to Uisce Éireann's response.
- The RZLT Guidelines state the following:
  - 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 (pg 7);
  - A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist (pg 8).
- Cork Council is also aware that the existing spare capacity available in the Dunmanway 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.
- The provision of a Northern Relief Road is an objective of the 2022 County Development Plan (DY-U-01) and paragraph 2.9.34 of the Development Plan states 'In order to improve access to development lands to the north of the town and to take traffic away from the town centre, there is a need to examine

proposals for a relief road to the north of the town.’ The proposals for the construction of the proposed relief road along the south of the site as set out in the CDP ref to works internal to the site that can be provided as part of a consented site development project – the relief road can be developed concurrent with housing on the lands. Based on the submissions received, all of DY-X-01 and DY-R-01 and the western portion of DY-R-02 appear to be in the same ownership. Therefore, all of these lands can be accessed from the public road to the west (St. Mary’s Road) where footpaths are also available. Access to Spa Road to the east can be provided as part of the Development of DY-R-02. The provision of internal site works does not preclude development of the site.

## 8.0 Assessment

The grounds of appeal raise the matter of wastewater infrastructure capacity. Uisce Éireann’s wastewater treatment capacity register identifies that Dunmanway wastewater treatment plant (WWTP) has a ‘Amber’ capacity level, indicating potential spare capacity, with applications to be considered on an individual basis considering their specific load requirements. Uisce Éireann’s response, states that with respect to wastewater treatment capacity, there is limited spare capacity in the Dunmanway Wastewater Treatment Plant (WWTP). The WWTP is currently not compliant with its license limits but is capable of achieving at least Urban Wastewater Treatment Directive standards. Potential availability of capacity would be dependent on any additional load not resulting in a significant breach of the combined approach as set out in Regulation 43 of the Waste Water Discharge (Authorisation) Regulations 2007, which is a matter for the Planning Authority to consider.

- 8.1. Table 5.2.2 ‘West Cork Municipal District – Proposed Scale of Development’ in Volume 5 West Cork, of the Cork County Development Plan 2022-2028 includes the following text at the end of the table in relation to new development in Dunmanway:
- “Any new development in Dunmanway which discharges into the Bandon SAC will have to be put on hold until such time as issues relating to the outfall location for this WWTP are resolved. It will be necessary to make improvements to wastewater*

*infrastructure at Dunmanway to resolve issues relating to capacity of the sewer network, overflows from the pump station at Long Bridge and the location of the discharge of treated effluent into the Bandon River SAC, to allow additional population growth targeted for the town of Dunmanway, as set out in this table, to take place. This is to ensure compatibility with Water Framework Directive and Habitats Directive requirements...”*

- 8.2. General Objective DY-GO-02 of Volume 5 ‘West Cork’ in the Development Plan requires that:

*“It will be necessary to make improvements to wastewater infrastructure in Dunmanway to resolve issues relating to capacity of the sewer network, overflows from the pump station at Long Bridge and the location of the discharge of treated effluent into the Bandon River SAC, to allow the additional population growth targeted for the town of Dunmanway as set out in DY-GO-01 to take place. This is to ensure compatibility with Water Framework Directive and Habitats Directive requirements. Cork County Council, with support from Irish Water and other stakeholders, is committed to identifying and implementing the most appropriate solutions for this issue as soon as possible. Options to be explored include the relocation of the outfall of the effluent discharge pipe to a location downstream of the Freshwater Pearl Mussel population and/or the development of a polishing wetland. Proposed infrastructural improvements will be subject to Appropriate Assessment taking account of the proposed 25% population increase for the town prior to implementation. New developments requiring a connection to the Dunmanway WWTP will not be permitted until the necessary infrastructural upgrades are in place.”*

- 8.3. Planning Application Reg. Ref. 20/212 was previously refused to the south of the site in Dunmanway in 2020 due to similar provisions under the relevant Municipal District Local Plan applicable to the site at that time. The reasons related to the requirement for infrastructural upgrades to Dunmanway WWTP in order to ensure compatibility with the Water Framework Directive and Habitats Directive; and affect upon the integrity of the Brandon River SAC as a result of the proposed development connecting to the Dunmanway WWTP.

8.4. Application (reg. ref. 20/212) referenced above and in section 3 of this report was therefore refused due to considerations under the Habitats Directive and in light of impact upon the integrity of the Brandon River SAC. The reasons for refusal do not refer to capacity constraints at Dunmanway WWTP. I note the provisions under the Development Plan requiring infrastructure upgrades to the Dunmanway WWTP, however these do not relate to capacity of the WWTP per se, and concerns infrastructural upgrades to address sewer network capacity, overflows from the pump station at Long Bridge and the location of the discharge of treated effluent into the Brandon River SAC. These upgrades works are in the control of the Local Authority and Uisce Éireann.

8.5. Section 653B, of the Taxes Consolidation Act 1997 as amended, states that for lands to be included on the map:

*“(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.”*

8.6. There is capacity at Dunmanway WWTP (albeit limited capacity). While there are infrastructural upgrades required, these upgrades are required to protect the integrity of the Brandon River SAC European site, rather than relating directly to capacity of the WWTP. Uisce Éireann have confirmed that there is spare capacity at Dunmanway WWTP, albeit limited. Page 17 of the RZLT Guidelines confirms that:

*“Where capacity exists in wastewater treatment plants or water supply plants for a settlement, all lands which are zoned and connected or able to be connected to the relevant network should be considered in scope until such time as the capacity is confirmed to have been utilised.”*

8.7. Page 8 also confirms that with respect to the definition of serviced lands:

*“...A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist...”*

8.8. The site is not situated adjacent to public roads, however from the RZLT appeals before the Board, it is evident that the subject site is situated adjacent to other lands in the same landownership control, and via those adjacent lands, access to/or ability



to connect with ease, to road, pedestrian, public lighting, water/wastewater and other relevant infrastructure is available (Refer to associated RZLT appeals reg. ref. ABP 316715-23 and 316719-23). With respect to the Northern Relief Road, the zoning states that development of the site should 'make provision' for this route, not deliver it. It would be within the normal parameters of a development proposition to account for strategic routes through the site and this would extend only to the confines of the site. The Local Authority also confirm that this would be the expectation of development of the site in their response to this appeal set out in section 7 above.

8.9. In conclusion, Dunmanway WWTP has capacity (albeit limited), and as such the site is considered to be serviced and in scope for the RZLT Map.

## 9.0 Recommendation

9.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## 10.0 Reasons and Considerations

10.1. 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 the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site is 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

25 August 2023