



An
Bord
Pleanála

Inspector's Report ABP-316741-23.

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	Lands at Geraldine Road, Athy, Co. Kildare
Local Authority	Kildare County Council.
Local Authority Reg. Ref.	KCC-C108-35
Appellant	Paddy Raggett Homes Limited
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site, area not stated, comprises a parcel of land located in the eastern environs of Athy Town. The site is bound by a separate landholding to the north and west, to the east by Shamrock Lodge, a Protected Structure (in separate ownership), and Geraldine Road to the south.
- 1.2. This appeal should be read in conjunction with ABP316747-23, which relates to an appeal against the inclusion of land on the Residential Zoned Land Tax Map on the directly adjoining lands which form part of the overall land holding as presented in planning applications Ref: 19234, Reg: 19233 and Ref: 18921 referenced in the planning history below.

2.0 Zoning

- 2.1. The site is zoned 'new residential' in the Athy Local Area Plan 2021 - 2027 under objective 'C', with a stated objective "To provide for new residential development".

3.0 Planning History

- 3.1. Ref: 19234: Conditional planning permission granted by Kildare County Council on the 11th August 2020 for phase 2 of a three phase housing development to include 86 residential units comprising two storey detached dwelling houses, two storey semi-detached dwelling houses, two storey town houses and 7 no. two storey apartment blocks, new site entrance off Geraldine Road with access road, cycleway and footpath, vehicular and pedestrian access to adjoining site to the south west (comprising 0.8453 hectares) and all site development works.
- 3.2. Ref: 19233: Conditional planning permission granted by Kildare County Council on the 17th January 2020 for phase 3 of a three phase housing development to include erection of 50 residential units comprising two storey semi-detached dwelling houses two storey town houses and 3 no. two storey apartment blocks, new site entrance off Geraldine Road with access road, cycleway and footpath, vehicular and pedestrian access to adjoining site to south west (comprising 0.8453 hectares) and all site development works.

- 3.3. Ref: 18921: Conditional planning permission granted by Kildare County Council on the 3rd September 2019 for phase 1 of a three phase housing development to include 99 residential units comprising two storey detached dwellings, semi-detached dwellings, two storey town houses, and 1 no. two-storey apartment block, new site entrance off Geraldine Road, vehicular and pedestrian access to adjoining site to the south west (comprising 0.8453 hectares) and all site development works.

4.0 Submission to the Local Authority

- 4.1. The appellant submits that the lands do not meet the criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended, as the lands cannot be serviced for water and wastewater through adjoining lands owned by Athy Clonmullion Developments Ltd.
- 4.2. Athy Clonmullion Developments Ltd. has informed the landowner that there is a short term issue in respect of sewer capacity which is a constraint on capacity.
- 4.3. A condition was attached (Condition No. 21) of PL. Ref. 19/233 in relation to wastewater.
- 4.4. As such the appellant requests that the lands are removed from the Draft RZLT Map.

5.0 Determination by the Local Authority

- 5.1. The subject lands are zoned 'C', "new residential" in the Athy Local Area Plan 2021 – 2027.
- 5.2. The landowner submits that the lands do not meet the qualifying criteria set out in the Section 635B, as the land cannot be serviced for water and wastewater via the adjoining Clonmullen estate and that the developers of the Clonmullen estate state that their lands have a short-term issue in respect of sewer capacity which is a constraint on development in January 2022.
- 5.3. The submission was referred to Uisce Eireann and a report was received which confirms that:

"Water Networks:

- A watermain exists on the public road in close proximity to the site and available GIS data indicates that the watermain is accessible (10m distance away) via the adjoining Clonmullion, adjoining the land parcel. This is subject to the planning authority confirming that this estate is taken in charge.
- Capital works in the form of watermain upgrades to the infrastructure within the Clonmullion estate will be required to cater of the entire development site.

Wastewater Network:

- A collection sewer exists on the public road in close proximity to the site and available GIS data indicates that the collection sewer is accessible (10m distance away) via the adjoining Clonmillion estate, adjoining the land parcel. This is subject to the planning authority confirming that this estate is taken in charge.
- A capital work scheme is underway to upgrade the infrastructure to cater for the area. However, interim connections can be accommodated through the Roads Authority to remove surface water contribution from the catchment to the equivalent of 3 x peak flow from the proposed development lands”.

- 5.4. The report from Uisce Eireann confirms that a watermain and a collection sewer exists on the Clonmullen estate Road, in close proximity to the site (10m distance away).
- 5.5. The Clonmullen residential estate is listed as being taken in charge on the ‘List of Estates Taken in Charge up to 3rd February 2023”.
- 5.6. The response further states that a capital works scheme is underway to upgrade the infrastructure for the area and suggest that interim connections can be accommodated through engagement with the Roads Authority to remove surface water.
- 5.7. Regard is had to the RZLT Guidelines (page 8), which state that ‘*A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*’.
- 5.8. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial

Guidelines “Residential Zoned Land Tax – Guidelines for Planning Authorities’ for inclusion on the RZLT Map.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant states that the subject lands do not meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended. It is not reasonable to consider that the lands have access to foul sewer drainage, necessary for dwellings to be developed, as it is not clear that there is sufficient capacity access available, until the Drainage Area Plan being carried out by Uisce Eireann is complete, which is estimated to be Q4 2025.
- The Uisce Eireann confirmation of feasibility letter (attached to the appeal), sets out that water is available but that a Drainage Area Plan needs to be carried out to determine capacity. The confirmation of feasibility letter is dated 27th March 2023, one day prior to the date of the Kildare County Council’s determination of 28th March, which one can assume is the most up to date information available from Uisce Eireann.
- The appellants notes that in relation to Point 2 of the Council’s determination letter where it is stated that there are sewers available within 10m at the Clonmullion estate, this estate is at the other side of the main Dublin commuter trainline.
- The Councils determination is at odds with the tone and content of the confirmation of feasibility from Uisce Eireann and the appellants direct correspondence with Uisce Eireann.
- When the appellant sought to activate their lands, connection/capacity was an issue, however when assessing whether a land tax can be levied the lands are serviceable. It is very clear that connection or capacity is not available for the subject lands, and in that case the appellant states that the lands should be removed from the final RZLT map for 2024. When the Drainage Area Plan is available and it confirms capacity, the lands can then be included.

7.0 Assessment

- 7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. It is noted that subject site is zoned objective 'C', 'new residential', as per the Athy Local Area Plan 2021 – 2027.
- 7.2. The issues raised by the appellant with respect to sufficient capacity available to service the subject lands are noted. Regard is had to the correspondence from Uisce Eireann i.e. the Uisce Eireann further information response to the 'RZLT Query' sought by the Local Authority, and the confirmation of feasibility report received from Uisce Eireann by the appellant submitted as part of the subsequent appeal. The correspondence states that water and wastewater connections are feasible subject to upgrades, the Local Authority report references that interim connections can be accommodated through engagement with the Local Authority. However, reference is made to a study being required to determine the capacity of the network as part of the Uisce Eireann report accompanying the appeal.
- 7.3. I note that Kildare County Council have confirmed that the Clonmullen residential estate is listed as being taken in charge on the 'List of Estates Taken in Charge up to 3rd February 2023, however as per the Council's website, the most recent List of Estates Taken in Charge is up to the 21st July 2023.
- 7.4. The appellant refers to the distance and location of the sewer to the site. However, the proximity of the available sewers to serve the subject site is a matter for the local authority/Uisce Eireann and does not exempt the lands from inclusion on the RZLT maps.
- 7.5. Notwithstanding, the requirement for upgrades to the system and the need for a study to determine the capacity of the network, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states "*Information from stakeholders such as Irish Water will play a key role in identifying these 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 this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*".

As per the guidelines, a need for upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.6. It is also noted the Greater Dublin Area water resource zone (WRZ ID: GDA) is stated to have 'Capacity Available - LoS improvement required', on the Uisce Eireann Water Supply Capacity Register published in June 2023 (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*').
- 7.7. In my opinion there is a viable water supply/ connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.8. Furthermore, the Athy WWTP (Ref. D0003) has a 'Green Status' on the Uisce Eireann Wastewater Treatment Capacity Register published in June 2023. Green status is stated to mean '*spare capacity available.*'
- 7.9. In my opinion there is a viable wastewater connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of wastewater, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.10. As such, the lands are considered to be serviced for residential dwellings as per as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as KCC-C108-35 on the map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that is it not reasonable to consider that the lands have access to foul sewer drainage or that there is sufficient capacity available necessary for dwellings to be developed.

9.2. 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 Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022. The lands as identified KCC-C108-35 are considered in scope of section 653B of the Taxes Consolidation Act 1997, as amended,

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

Emma Nevin
Planning Inspector

30th August 2023