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Pleanála

## Inspector's Report ABP-316761-23.

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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>	Black Road, Malahide, Co. Dublin.
<b>Local Authority</b>	Fingal County Council.
<b>Local Authority Reg. Ref.</b>	RZLT 013/22
<b>Appellant</b>	CE Cladewell Estates Ltd & Bryan Lynam
<b>Inspector</b>	Irené McCormack

## 1.0 Site Description

1.1. The site comprises c. 3.1ha. of lands on Black Road, Malahide, Co. Dublin.

## 2.0 Zoning

2.1. The site is zoned RS – Residential in the Fingal Development Plan 2017-2023. This zoning Objective – *Provide for residential development and protect and improve residential amenity.*

2.2. Zoning Objective Vision- *Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.*

Note: Fingal Development Plan 2023-2029 was adopted by the Elected Members of Clare County Council at a Special Planning Meeting on the 22<sup>nd</sup> of February 2023. The Plan came into effect 6 weeks from the date of adoption, on 5<sup>th</sup> April 2023

## 3.0 Planning History

### 3.1. Site

**ABP-313265-22** -Permission refused on 28<sup>th</sup> March 2023 for 100 no. residential units (34 no. houses, 66 no. apartments), creche and associated site works.

Permission was refused for 1 no. reason relating to the piecemeal provision of open space.

### Adjacent – Castleway Pumping Station

FCC Reg. Ref. F21A/0451 – Permission granted on 2<sup>nd</sup> December 2021 for upgrade of the existing foul water storage tank to provide for a pumping station with increased storage capacity, new sewer and rising main along Kinsealy Lane.

## 4.0 Submission to the Local Authority

- The lands consist of a private dwelling and associated gardens and adjacent field.
- Reference is made to the SHD application on the site.
- Submission requested the land be excluded from the RZLT as the land is currently constrained due to the lack of capacity in the existing foul sewer network and heavily reliant upon the delivery of significant infrastructure works.

- The works required in relation to wastewater management and infrastructure can be considered materially significant and require third party lands.

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

- 5.1. The local authority determined the site to be in scope and should remain on the map. The local authority consideration stated that land is zoned and serviced.
- 5.2. Internal Water Services report noted foul infrastructure in the vicinity and capacity constraints but that it is reasonable to expect such works to be included as part of any future planning application.
- 5.3. Uisce Eireann were consulted by the local authority and reported that the lands are currently serviced for water provision. The site is not currently serviced by wastewater, upgrade works are required and due to the topography will have to pump to the UE network. Works required to the develop the site are set out.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

- The site contains a private residence, and this is not liable for the tax. It is also contended that the land should not be 'in scope' due to the lack of services/capacity to cater for the redevelopment of these land in any event.
- The appeal set out that planning context and notes the refusal of ABP 313265-22 and that due regard should be given to this refusal. It is also set out that works on the pumping station have not commenced.
- The appeal notes that while the appellant identified a solution to the significant constraints to the wastewater capacity in the area as part of their planning application (ABP 313265-22), there is no capacity currently to cater for the development. (Engineering report accompanying the SHD application appendix to the appeal)
- The lands are not immediately serviced by wastewater facilities and to provide residential development on these lands significant works are required in relation to wastewater management and infrastructure.

## **7.0 Assessment**

- 7.1. In relation to the current residential use the lands are in scope by virtue of Section 653B of Part 22A of the Taxes Consolidation Act 1997. However, Section 653O of the Act sets out that while the lands maybe in scope for the tax, provided they are associated with the existing residence they are not liable for the RZLT. This is a matter for the Revenue Commission
- 7.2. The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 iii) Services to be considered of the guidelines state that *“in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope”*.
- 7.3. The guidelines states that where the infrastructure does not meet the threshold above, the following needs to be considered:
- *Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope?*
  - *Do the connections to services involve minor works, in which case the land may be in-scope?*
  - *Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope.*
- 7.4. Regarding concerns raised about wastewater, the LA in their assessment indicate that the site is serviced. I note the submission from Uisce Eireann reported that the site is not serviced by wastewater and specifies the requirements to connection including the delivery of Castleway Pumping Station for which planning permission has been approved. The applicant considers these works to be “very significant” and states that works have not yet commenced on Castleway Pumping Station.

- 7.5. Regarding the upgrade works required to the wastewater infrastructure network in order to facilitate development, I note the Water Services department report having regard to the UE report states that there are services in the vicinity, and it is reasonable to expect such upgrade works to be included as part of any future planning application. I would agree and I further consider that the capacity to service the site is reflected in the planning application submitted by CE Cladewell Estates Limited on the lands and the grant of permission the Castleway Pumping Station (FCC Reg. Ref. F21A/0451) and therefore not “significant” as argued by the appellant. Of relevance, ABP 313265-22 was not refused on grounds relating to wastewater connection. On this basis, it is reasonable to consider that the lands to be ‘*connected*’ or ‘*able to connect*’ to the existing wastewater network.
- 7.6. The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines

## 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. The site is part of 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.

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.

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Irené McCormack  
Senior Planning Inspector

18<sup>th</sup> July 2023

