



An
Bord
Pleanála

Inspector's Report ABP-317015-23.

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 Annabella, Mallow, Co. Cork
Local Authority	Cork County Council
Local Authority Reg. Ref.	DRZLT- 472901931
Appellant	Reside Group
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site comprises a parcel of land located in the defined settlement boundary of Annabella, to the west of Mallow town. The site is bound by Kennel Hill Road to the south and is surrounded predominantly by residential development to the east. The has a stated area of approximately 8.22ha.
- 1.2. It should be noted that the adjoining land parcel to the east-southeast, in the appellants ownership, is subject to a separate RZLT appeal under ABP-317016-23.

2.0 Zoning

- 2.1. The site is zoned objective MW-RR-03 as per Volume 3 'North Cork' of the Cork County Development Plan 2022-2028, as "Residential Reserve", which references objective ZU-18-12 Residential Reserve of the Plan and states that; *"Proposals on these lands should set out an orderly framework for the overall co-ordinated and phased development of the area taking into account infrastructural deficits and the topography and visibility of the site within the wider area. Development of this residential reserve is dependent on:*
 - *Provision of satisfactory access proposals that address the needs of the site and its surrounding context.*
 - *The availability of appropriate water and wastewater infrastructure to cater for the needs of the development*
 - *Mitigation of any negative effects on the landscape, natural and built heritage of the area ^ (TIA and RSA required)".*
- 2.2. Objective ZU-18-12: Residential Reserve of the Cork County Development Plan, 2022 – 2028 states;

"Provide a land reserve for the long-term orderly development of the Metropolitan towns of Carrigaline, Carrigtwohill, Cobh and Midleton and the Key Towns of Mallow and Clonakilty and some County Towns where appropriate. Such lands will not generally be required for development over the period of the Plan to 2028. From the beginning of year four of the Plan (May 2025), consideration may be given to the

development of some 'Residential Reserve' lands where the Planning Authority is satisfied that:

a) Delivery of housing on zoned lands is proceeding faster than anticipated and additional land is required for the remaining Plan period, or,

b) It can be clearly demonstrated, to the satisfaction of the planning authority, that a zoned parcel of land will not come forward for development due to infrastructural or other demonstrable constraints during the remaining period of the Plan, and the proposed residential lands can be serviced and offer a reasonable substitute in terms of capacity, sequential development, connectivity, access to services and amenity etc., to secure the population and housing targets for the settlement.

c) The Planning Authority is satisfied that delivery of the development can reasonably commence before the end of the Plan period, and infrastructure is in place or can be provided to facilitate same.

d) Where development is considered under (b) above the scale of development shall not generally exceed the capacity of the zoned lands it is replacing.

e) Objective ZU 18-11 will also apply to lands identified as Residential Reserve.

f) It can be demonstrated that the housing target for the area set out in the Core Strategy cannot otherwise be achieved within the Plan period.

g) The development would not result in the Core Strategy targets being exceeded, or unduly prejudice the development of new 'Residential' zoned land within those targets".

3.0 Planning History

Relevant planning history:

Ref: ABP-312640-21 – Permission granted by An Bord Pleanála on the 27th May 2022 for a strategic housing development consisting of the construction of 299 no. residential units comprising houses, apartments/duplex units and apartments in 2 no. 4 storey blocks over lower ground floor level car parking and a childcare facility. The scheme included the provision of landscaping and amenity areas including a neighbourhood play area to the north of Woodview Drive. The works also included public realm upgrades along Annabella Park Road and Kennel Hill Road including

footpaths and raised table at the entrance to Derville Estate and all associated ancillary development including vehicular access. A new amenity walkway along the northern boundary of the site including a cycle/pedestrian bridge over Leaslands Stream was also proposed; lighting, drainage, boundary treatments, ESB Substation, bicycle & car parking and bin storage.

Ref: 156119 - Conditional planning permission granted by Cork County Council on the 7th July 2016, and decision to grant permission upheld on appeal to An Bord Pleanála (ABP PL04.246853) on the 1st November 2016 for a residential development comprising the removal of disused farm buildings and the construction of 61 no. dwelling houses and all associated ancillary development works including vehicular access, parking, footpaths, foul and storm water drainage (including the provision of a storm water attenuation tank at Woodview Drive) landscaping and amenity areas.

4.0 Submission to the Local Authority

The submission states that;

- Water and wastewater upgrades are required.
- Planning permission secured at the expense of the landowner; services would not be achievable without same.

5.0 Determination by the Local Authority

5.1. Cork County Council had full regard to the infrastructural capacities relating to all submissions received in relation to its RZLT Draft Map, in accordance with Section 653B of the Taxes Consolidation Act, 1997, as amended including referring submissions relating to water services to Uisce Eireann.

5.2. A report was received from Uisce Eireann which confirms that:

- A watermain and sewer exists on the public road in close proximity to the site, GIS data indicates that a watermain is accessible 15 metres away, via the road, Annabella Park, adjoining land parcel.

- A sewer exists on the public road in the Dernville Housing estate, located to the southeast of the site. GIS data indicates that this sewer is accessible 265m away via the road, Annabella Park, adjoining the land parcel.

The upgraded Mallow Wastewater Treatment Plant is estimated to be commissioned by the end of April 2023. Network upgrades are expected to be completed by the end of April 2023.

- 5.3. Regard is had to the RZLT Guidelines (page 7) which states; “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”.
- 5.4. Regard is had to the RZLT Guidelines (page 8) which states; ‘*A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*’.
- 5.5. It is noted that a Strategic Housing Development (Ref: ABP-3120640-22) for 299 residential units and a creche was permitted on the subject site on 27th May 2022. Until development of the site occurs, all of the zoned lands under the zoning remain in scope for the purpose of the RZLT.
- 5.6. Notwithstanding the County Development Plan zoning objective for the subject site as a residential reserve, and the current upgrade works for Mallow WWTP, the above residential consent allows for development of the site for residential use.
- 5.7. 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 raised similar issues to those in the submission to the local authority including:

- The appellant states that the lands are zoned for residential reserve in the Cork County Development Plan and will only be considered for development from May 2025 as per Section 18.3.30 of the Plan. Until such time no residential development can take place on these lands. On this basis the lands should not be considered within the scope of the RZLT.
- Based on an analysis of the Draft RZLT Maps for Cork County, the appellants lands are the only lands zoned 'Residential Reserve' which have been included in these Draft RZLT Maps. The Council have given no justification or reason for their decision, which seemingly makes an exception for the appellants lands.
- The decision taken by Cork County Council did not provide satisfactory infrastructural assessment of the lands as required under Section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022.
- Without upgrades to both the water network and the wastewater system, residential development on these lands cannot take place.
- Irish Water have responsibility for the delivery of public (wastewater) infrastructure necessary for the lands to be developed. Therefore, the development of these lands is outside the appellant's control.
- While measures are being put in place to provide the necessary infrastructure to service the area, there is no definitive timeframe available for the delivery of this infrastructure despite the Council's suggestion that an imminent completion of works is expected.

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 MW-RR-03, "Residential Reserve" as per Volume 3 'North Cork' of the Cork County Development Plan 2022-2028. Under this zoning objective, as noted in Section 2.0 above, development is dependent on satisfactory access, appropriate water and wastewater infrastructure and mitigation

of negative effects on the landscape. The policy objective ZU-18-12: Residential Reserve of the Cork County Development Plan, 2022 – 2028 further states that “such lands will not generally be required for development over the period of the Plan to 2028. From the beginning of year four of the Plan (May 2025), consideration may be given to the development of some ‘Residential Reserve’ lands”, this is subject to the satisfaction of the Planning Authority on certain criteria detailed above (Section 2.2).

- 7.2. The appellant states that the lands are subject to this reserve and as such cannot be developed. Notwithstanding the ‘residential reserve’, regard is had to the permission granted on site under Ref: ABP-312640-22 for residential development (and a creche facility), under the Cork County Development Plan, 2014, where the lands were zoned “MW-R-09: Medium A Density Residential Development”.
- 7.3. The Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, outlines that the purpose of the RZLT *“is to activate existing planning permissions and zonings where housing is permitted and where the land is connected to, or has access to services, but remains undeveloped. It is primarily intended to influence behaviour towards increased housing output”*, and *“The activation of existing permissions and utilisation of the resource of zoned serviced land is a key aspect of ensuring that housing development is forthcoming on residential landbanks and urban centres”*.
- 7.4. Section 4.1.1 (ii) of the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, also states; “Where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope”, subject to services being considered.
- 7.5. Notwithstanding the above, and while this issue was not raised by the appellant, I note that permission has been granted on site for a creche facility (under Ref: ABP-312640-21), as part of a residential scheme for the lands. As such I consider that part of the land, i.e. the creche, is required for the provision of community services.
- 7.6. Therefore, I refer to Section 653B(c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, which states;

“(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains, but which is not land—

*(iii) that it is reasonable to consider is required for, or is integral to, occupation by—
(l) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,”.*

- 7.7. The Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022 also state *“As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities”.*
- 7.8. Having regard to the Act and the Guidelines I consider that the permitted creche facility (under Ref: ABP-312640-21) on site determines that the lands subject to the creche are required, integral and occupied by social and community infrastructure, as per Section 653B (c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, and therefore the lands subject to this permission cannot be considered to be suitable for inclusion on the RZLT Map. As such, I recommend that the land pertaining to the creche site boundary only be removed from the RZLT map.
- 7.9. The Council stated that it had full regard to infrastructural capacities relating to all submissions received in relation to the RZLT Draft Map. It is also noted that the submission was referred to Uisce Eireann for consideration and comment.
- 7.10. Regard is had to the Uisce Eireann further information response to the ‘RZLT Query’ sought by the Local Authority as part of their assessment. Uisce Eireann confirmed that a watermain exists on the public road, in close proximity to the site. A sewer exists on the public road. The existing WWTP is to be upgraded and is estimated to be commissioned by mid-2023. Network upgrades are estimated within the same timeframe.
- 7.11. Notwithstanding, the requirement and pending upgrades to the existing 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, upgrades to an existing network are not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.12. It is also noted the Mallow WWTP (Ref. D0052) 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’*. It is also noted that a ‘WWTP Project Planned/Underway’.
- 7.13. 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.
- 7.14. In terms of water networks, a water main exists on the public road in close proximity to the site. It is also noted the Mallow water resource zone (WRZ ID: 0500SC0131) 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’*).
- 7.15. 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.
- 7.16. The appellant also references that the responsibility to undertake these works lie with Uisce Eireann, with no indicative timeframe proposed, however, this is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.17. I consider that 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 partly confirm the determination of the Local Authority in respect of the lands identified as DRZLT- 472901931 as follows:

- (i) That the lands pertaining to the creche site boundary granted under Planning Reference ABP-312640-21, only, be excluded from the RZLT map.
- (ii) The remaining lands as identified DRZLT- 472901931 are considered in scope and should be included on the relevant RZLT maps.

9.0 Reasons and Considerations

9.1. The appellant requested that their site be removed from the map due to the fact that the lands are zoned for residential reserve and will only be considered for development from May 2025, that the lands do not have adequate infrastructure, and the delivery of the infrastructure is dependent on Uisce Eireann and should be excluded.

9.2. Having regard to the permitted creche facility (under Planning Reference: ABP-312640-21) on site, this determines that the lands pertaining to the creche site boundary granted under Planning Reference: ABP-312640-21, are required, integral and occupied by social and community infrastructure. The lands as part of this appeal identified as DRZLT- 472901931, that form part of the creche site boundary subject to Planning Reference ABP-312640-21, are, therefore, required for, or *is integral to, occupation by, social and community infrastructure* as per Section 653B (c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, and should not be included on the relevant RZLT maps.

9.3. The remaining lands as identified DRZLT- 472901931 are considered in scope as per Section 653B of the Taxes Consolidation Act 1997, as amended, and should be included on the relevant RZLT maps.

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

13th September 2023