



An  
Bord  
Pleanála

## Inspector's Report ABP-317016-23.

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**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- 473643149

**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. The has a stated area of approximately 4.01ha.
- 1.2. It should be noted that the adjoining land parcel to the north-northwest, in the appellants ownership is subject to a separate RZLT appeal under ABP-317015-23.

## 2.0 Zoning

- 2.1. The site is zoned objective MW-R-06 as per Volume 3 'North Cork' of the Cork County Development Plan 2022-2028, for "Medium A Density Residential Development".

## 3.0 Planning History

Relevant planning history:

Ref: 224819 - Conditional planning permission granted by Cork County Council on the 26<sup>th</sup> September 2022 for the construction of 35 no. dwelling units and all associated ancillary development works including access, parking, drainage, landscaping and amenity areas. The proposed dwelling houses will replace 20 no. residential units previously permitted under Cork County Council Ref. 15/6119 (An Bord Pleanála Ref. PL0.246853) (extended under Council Ref. 20/6130).

Ref: 226434 - Extension of duration of permission granted by Cork County Council on 25<sup>th</sup> February 2022 for development permitted under Planning Ref. 06/12722 & ABP Ref. PL04.224953 and extended under Ref. 13/4725, 18/4980.

Ref: 206130 – Extension of duration of permission granted by Cork County Council on 23<sup>rd</sup> November 2020 for development permitted under Planning Reference: 15/6119 (ABP Ref. PL 04.246853).

Ref: 166023 - Conditional planning permission granted by Cork County Council on the 12<sup>th</sup> August 2016 for the construction of a crèche facility to serve the adjacent

permitted residential development (Planning ref: 15/6119) and all associated ancillary development works including vehicular access, parking footpaths, drainage, landscaping and amenity areas.

Ref: 156119 - Conditional planning permission granted by Cork County Council on the 7<sup>th</sup> July 2016, and decision to grant permission upheld on appeal to An Bord Pleanála (ABP PL04.246853) on the 1<sup>st</sup> 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**

- 4.1. The submission cites planning permission in place under 15/6119 but that Irish Water have stated that lands at Annabella require upgrading of the Mallow WWTP. Further phases cannot be provided until that work is complete.
- 4.2. Submission also cites 16/6023, requires the provision of a creche and request for mapping to be amended to remove 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 Derville Housing estate, accessible 60m 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. Regard is had to the RZLT Guidelines (page 10) which states “*Where the land is zoned for residential development and specific objectives apply to provide such facilities, but the extent of land required for such a use is not identified, the land will fall into scope until such time as it is developed, and the relevant land will then fall out of scope*”.
- 5.6. Planning consent was granted under 15/6119 for residential development of 61 units. A subsequent consent under 22/4819 was granted to replace 20 units with 35 units. Under 16/6023 a creche on site was permitted (extension of duration under 22/6434 to July 2027). Requirement for a creche facility on these lands was not outlined as a specific objective for the land zoning (Objective MW-R-06 of the Cork County Development Plan 2022). Until development of the site occurs, all of the zoned lands under the Objective remains in scope for the purposes of the RZLT. When the site is developed the relevant non-residential land will fall out of scope.
- 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 require an upgrade of the Mallow WWTP before the site becomes fully serviced. Without these upgrades no residential development can take place.
- These lands will be serviced by future infrastructure provision which is to be provided as part of the Mallow Wastewater Treatment Plant upgrade. Section 2.4.90 of the Cork County Development Plan states that developers must be satisfied that they can secure a pre-connection agreement with Irish Water prior to the commencement of development for residential units in the settlement of Mallow. Until there is such certainty regarding the delivery of this infrastructure, these lands cannot be considered as fully serviced in relation to public infrastructure.
- The responsibility to deliver the infrastructure necessary for the appellants lands to be developed, is dependent on IW and while there is funding in place to deliver this infrastructure, there is no definite timeframe for this, and its delivery is outside the appellants' control. Without certainty on the delivery of the infrastructure, it is not reasonable to consider that the appellant has access to public infrastructure and facilitates necessary for dwellings to be considered.
- Part of the site (c.0.5 hectares) has an existing permission (Ref: 16/6023) for a creche facility to serve the adjacent permitted residential development. According to Section 653B(c)(iii) of the Taxes Consolidation Act, 1997, as amended, lands should not be subject to this RZLT tax where there is occupation by social, community of government infrastructure and facilities for the provision of childcare.

## 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-R-06, 'Medium A Density Residential Development' under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028.
- 7.2. 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.
- 7.3. 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.
- 7.4. Notwithstanding, the requirement and pending upgrades to the existing systems, 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 system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.5. 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'.

- 7.6. 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.
- 7.7. 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*').
- 7.8. 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.
- 7.9. With respect to the relevant policies in relation to infrastructure contained within the Development Plan, I consider that these would not prevent a proposal coming forward to develop the lands for residential dwellings and this, would be addressed through the development management process and consultation with any relevant statutory bodies and is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.10. The appellant also references that the responsibility to undertake these works lie with Uisce Eireann, with no indicative timeframe proposed, however, this is not relevant criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.11. Notwithstanding the above, I note that permission has been granted on site for a creche facility (under Ref: 16/6023), as part of a residential scheme for the lands. As such I consider that the land is required for the provision of community services.
- 7.12. Therefore, I refer to Section 653B(c)(iii)(I) 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.”*

- 7.13. 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”*.
- 7.14. Having regard to the Act and the Guidelines I consider that the permitted creche facility (under Ref: 16/6023) on site determines that the lands 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 cannot be considered to be suitable for inclusion on the RZLT Map.

## **8.0 Recommendation**

I recommend that the board set aside the determination of the Local Authority and that the lands identified as part of this appeal as DRZLT- 473643149 be removed from 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 the lands do not have adequate infrastructure, the delivery of the infrastructure is dependent on Uisce Eireann and that there is permission for a creche facility on site.
- 9.2. Having regard to the permitted creche facility (under Ref: 16/6023) on site, this determines that the lands are required, integral and occupied by social and



community infrastructure. The lands as part of this appeal identified as DRZLT-473643149, are, therefore, required for, or *is integral to, occupation by, social and community infrastructure* as per Section 653B (c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended, and should not 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.*

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Emma Nevin  
Planning Inspector

15<sup>th</sup> September 2023