



An
Bord
Pleanála

Inspector's Report ABP-320311-24.

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

Location

Ballymacaula, Drumbiggle, Keelty, Circular Road, Ennis, Co. Clare

Local Authority

Clare County Council.

Local Authority Reg. Ref.

24S1/010

Appellant

Glenveagh Homes Ltd.

Inspector

Fergal Ó Bric

1.0 Site Description

The appeal lands identified as 24S1/010 and Parcel ID number CELA0001497 (part of). The lands comprise c. 9.45 hectares of land within the designated settlement boundary of Ennis, Co. Clare.

2.0 Zoning

2.1. The site is zoned Residential and Low Density Residential LDR7 in the Ennis Settlement Map included in Volume 3a Ennis Municipal District of the Clare County Development Plan 2023-2029. The following is set out within the Plan specifically in relation to these lands:

2.2. Section 19.3-Land use zoning within the Development Plan sets out the following: *Sufficient lands should be provided at appropriate locations in accordance with the population and housing targets as set out in the Core Strategy, to facilitate the envisaged land use requirements of the area during the lifetime of this Development Plan.*

2.3. Section 2.5.2 of Volume 3a Ennis Municipal District of the Clare County Development Plan 2017-2023. States:

Site LDR7 Circular Road: This site has the benefit of planning permission. Should future applications be made residential development on this site will be required to incorporate a buffer of sufficient width between the proposed development and the N85 to protect residential amenity.

3.0 Planning History

3.1. Site

PA reference number S1/016, parcel ID number CELA0001497., in 2023, Clare County Council determined that the lands should be included within the RZLT map. ABP reference 316400-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified as land parcel ID CELA0001497 under S1/016 on the RZLT map.

ABP 314448-23 (SHD) - Permission granted by An Bord Pleanála to Glenveagh Homes Limited on 18th day of April /2023 for 289 residential units (265 houses and 24 apartments), creche and associated site work at Ballymacaula, Drumbiggle, Keelty, Circular Road, Ennis, Co. Clare

ABP 306088-19 (P 18-811): Permission granted for 99 residential units, ancillary surface car parking; provision of a crèche. Granted December 2020.

P. A. Reg, Ref. 06/2182/PL 221409: The planning authority decision, (Clare County Council) to grant permission for 147 dwellings, was overturned following third party appeals based on: (1) Premature development due to deficiencies in sewerage facilities, (2) serious injury to visual amenity due to a noise barrier, 2.5 m high to be erected on the boundary with the Western Relief Road and, (3) inadequate pedestrian connectivity between the site and the urban area.

P. A. Reg, Ref. 06/144/PL 221408: The planning authority decision, (Ennis Town Council) to grant permission for fifty houses and twenty eight apartments was overturned following third party appeals on the basis of (1) Premature development due to deficiencies in sewerage facilities, (2) inadequate pedestrian connectivity between the site and the urban area.

P. A. Reg. Ref. 04/2599 PL214836: The planning authority decision, (Clare County Council) to grant permission for 159 dwellings and a creche with living accommodation overhead was overturned following appeal based on reasoning that it would be prejudicial to public health because it was not demonstrated in the proposals for surface water collection, attenuation and disposal the development could be satisfactorily drained. There were some prior applications to Ennis Town Council or Clare County Council in respect of which a decision was not determined or were withdrawn by the applicant. (P. A. Reg. Refs 99/222 (PL 121236), 99/2373 and 04/2520 refer.)

P. A. Reg. Ref. 237/17 – PL 300590: Further to appeal permission was granted for a forty-two dwelling unit development on the adjoining lands to the south under construction at the time of inspection.

4.0 Submission to the Local Authority

The appellants raised the following issues:

- The lands are not serviced by footpath, lighting, and energy connections except via Third Party lands.
- An upgrade would be required to the public wastewater infrastructure.

Further information was received from Uisce Eireann in relation to water supply and wastewater network connections and capacity within the piped service systems.

5.0 Determination by the Local Authority

The local authority determined that the site fulfils the qualifying criteria to be included in the Final Map for the Residential Zoned Land Tax for the following reasons:

- 1 The land in question is included in the Clare County Development Plan 2023-2029 and is zoned for residential development or zone for a mixture of uses, that includes residential development, 2. the land is serviced, or is reasonable to consider may have access to services.

6.0 The Appeal

6.1 Grounds of Appeal

- The appeal sets out that the lands do not meet the qualifying criteria set out in section 653B as the lands are constrained by infrastructure requirements including footpath, lighting and energy that must be made through land owned by a Third Party but principally due to the fact the Irish Water has identified necessary upgrades to the WWTP.
- The RZLT Guidelines, June 2022 established that land “*must have access to or be connected to relevant services*”, The necessary upgrades to the WWTP are outside the control of the appellant demonstrating the lands should be determined “Out of Scope”.

- Uisce Eireann (UE) state that capacity exists at present for some residential development. However, based on the UE correspondence, it is clear that the full extent of the site cannot be developed for residential purposes.

7.0 Local Authority submission

The local authority made no comment in relation to this appeal.

8.0 Assessment

8.1 The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned Residential and Low Density Residential LDR7 in the Ennis Settlement Map included in Volume 3a Ennis Municipal District of the Clare County Development Plan 2023-2029. The local Authority determined that the lands are in scope and that they remain on the RZLT map. The site is within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.

8.2 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 of the RZLT Guidelines set out the following:

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”*.

8.3 Section 4.1.1 ii) Review of land with planning permission of the guidelines states that *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....Significant works by the applicant to undertake the development which are a part of the plans and particulars lodged as a part of the permitted development should be given careful consideration in light of Section 4.1.1.(iii) of these Guidelines.

8.4 Of relevance, I note that the site has been the subject of a recent grant of planning permission ABP 314448-23 (SHD) - Permission granted to Glenveagh Homes Limited on 18/04/2023 for 289 no. residential units. I have reviewed the conditions attached to this grant of planning permission and note there is no specific condition relating to wastewater upgrades or constraints that would preclude development coming forward on the site.

8.5 Uisce Eireann have stated in their submission to the Planning Authority (dated 10th day of May 2024) that a watermain is accessible on Circular Road within the site boundary and on Drumbiggle Road and a public sewer connection is available c. 150m at the Drumbiggle Road/Caracalla Road junction. UE notes capacity at present for some development on the site, however upgrade works are likely to be required to cater for the development of c.330 units on the overall site. On this basis, it is reasonable to consider that there is some capacity in the wastewater network to cater for development.

8.6 I also note that the local authority reference that a public footpath and public lighting exists along the R474 from which the lands can be accessed.

8.7 Based on the information available I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B.

8.8 The appeal grounds do not raise any other matters 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.

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 final RZLT map.

10.0 Reasons and Considerations

10.1. The lands identified as 24S1/010 (Parcel ID number CELA0001497 -part of) located on residentially zoned lands identified within the current Clare County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area with documentary evidence from Uisce Eireann that services are available, and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Clare County Council

Local Authority Reference Number: 24S1/010

Appeal Glenveagh Homes Ltd. in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Clare County Council on the 27th day of June 2024 in respect of the site described below.

Lands at: Ballymacaula, Drumbiggle, Keelty, Circular Road, Ennis Co. Clare

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number CELA0001497 (part of). under 24S1/010 should remain on the RZLT map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as 24S1/010 (Parcel ID number CELA0001497 -part of) located on residentially zoned lands identified within the current Clare County Development Plan are considered in scope of Section 653B(a) of the Taxes Consolidation Act 1997, as amended. The lands are located within an established urban area with documentary evidence from Uisce Eireann that services are available, and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

I confirm that the report represents my professional 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.

Fergal Ó Bric
Planning Inspectorate

19th day of September 2024