



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316410-23

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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>	Lands at Knockboy, Dunmore Road, Waterford.
<b>Local Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	WFD-C15-14.
<b>Appellant(s)</b>	Suirbay Ltd.
<b>Inspector</b>	Daire McDevitt

## **1.0 Site Location and Description**

The lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) are located at Knockboy on the northern side of the Dunmore Road in Waterford.

The Northeastern portion of the lands outlined on the Draft RZKT Map refers to lands zoned HA which were excluded from the Local Authority Determination and as such do not form part of the lands under appeal.

## **2.0 Zoning and other provisions**

The relevant plan is the Waterford City and County Development Plan 2022-2028.

Vol. 1 Written Statement

Vol. 3, Appendix 17 Tiered Approach to Zoning.

Volume 4, Map 2 Zoning and Flooding Map.

The lands are zoned R1 New Residential with a stated objective 'provide for new residential development in tandem with provision of new social and physical infrastructure'.

The lands are the subject of two Residential Phasing. Residential Phase 1 and Residential Phase 2.

Specific Objectives WCD029- Knockboy. To ensure any developments on this site provides for a Green Infrastructure (GI) link which connects the area of open space to the west of Knockboy Road L5529 with the amenity zoned lands to the north of the River Cottage.

Specific Objectives WCD013- Cumann naBan Ring Road (R710). To ensure that development proposals located in close proximity to the R710 Cumann na Ban Ring Road make provision for a Green Infrastructure (GI) link/buffer to connect the Waterford greenway at Carriganmore to Kings Channel.

Portion of the lands are located on Flood Zone A.

### **3.0 Planning History**

PA Ref. 22/146 (ABP Ref. 315967-23) refers to a current appeal relating to an application that was granted permission by WCCC for 90 units (phase 1).

### **4.0 Submission to the Local Authority**

The appellants made a submission to the local authority seeking to have their land removed from the draft map on the basis that the lands at 'Ring Road, Waterford' are the subject of an appeal with ABP (Case No. ABP 315967-23 PA Ref.22/146) which is the subject of FI/CFI/Third party appeal. As such the lands cannot be developed at present.

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

The local authority determined that:

Section 653A and B of the Act clearly set out the relevant qualifying criteria for determining whether land is in-scope for the purposes of the RZLT. Further interpretation and guidance in this regard is provided in Residential Zoned Land Tax-Guidance for Planning Authorities (June 2022) issued under section 28 of the Planning and Development Act 2000, as amended. Taking cognisance of the relevant criteria and associated guidance, the details outlined in your submission and further comment made by relevant consultees, please be advised that the planning authority considered that the lands meet the relevant qualifying criteria as set out in the Act and as such are considered to be in-scope for the purposes of the Act and the tax.

Reasons:

1. The lands have been assessed in a manner consistent to Appendix 4 & 5 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022), as amended, and are duly considered to be in scope for the tax.
2. The lands are zoned for residential development where a residential use is permitted in principle in the development plan.

3. The lands have access to services including water supply, foul and surface water sewers, roads, footpaths and public lighting and there is sufficient capacity to accommodate development of the lands.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Grounds of appeal are summarised as follows:

- The appeal fully intends to develop the site. Delays in bring the planning to fruition though FI/CFI (PA Ref. 22/146) and subsequent third party appeal (ABP 315967-22) has resulted in significant delays in developing the site. This is further delayed by the significant backlog of cases with An Bord Pleanála which means the case is unlikely to be decided on before 2024. Resulting in a period of 3 years since the application was lodged with WCCC.
- The appellant is of the view that they should be unfairly penalised for extensive delays in the planning process.

## **7.0 Assessment**

The comments raised in the appeal are noted. The local authority assessment is checklist based and provides no specific commentary on the submission received the draft map.

The appellants have submitted that development of greenfield lands can take up to 3 years when taking into account planning delays (current appeal with An Bord Pleanála)/planning process etc and therefore should be considered out of scope on these grounds. Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that "in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only".

The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B. Timelines/delays associated with the planning process, achieving full planning permission and commencing on site are not included in the criteria set out under section 653B of the Taxes Consolidation Act 1997, as amended.

Notwithstanding delays in the planning process. Section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 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 (iii) below". Section 4.1.1 (iii) refers to services to be considered.

Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authorities June 2022 states 'Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps. However owners of residential properties within these areas will not be liable for the tax (see section 653O(1)(a) of the legislation'.

As set out above, in assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only".

Compliance with the provisions of section 653O or not does not fall within the remit of this report.

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential. The lands are zoned R1 New Residential are considered within scope of section 653B(a)(i).

While not raised in the grounds of appeal I note that a portion of the lands under appeal are located on Flood Zone A. Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing including contamination and the presence of known archaeological or historic remains. While I note that flood risk is not mentioned in this sub-section, it is not excluded either, and the use of the word "including" would indicate that relevant matters of the site's physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. However in this case the location of the lands on Flood Zone A are noted. The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) clearly set out that residential development on flood zone A is high probability of flooding and most types of development would be considered inappropriate for this zone and that development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town

centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Therefore I conclude that it would not be reasonable to consider that those lands identified as Flood Zone A are not affected in terms of their physical condition to preclude the provision of housing. I am of the view that the portion of lands located on lands identified as Flood Zone A should be excluded from the final maps having regard to section 653B(c) and the grounds of appeal relating to this matter upheld.

The remainder of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) can be served in principle by the existing road network that is in place and are zoned residential. UE have confirmed that services are available. I consider it is reasonable to consider that the provision of access, footpaths, public lighting, surface water drainage, sewer and water connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and the grounds of appeal should be dismissed.

The grounds of appeal have not raised matters under section 653B that would warrant the exclusion of the lands from the final RZLT map. Having regard to the foregoing I consider that the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## **8.0 Conclusion & Recommendation**

The portion of lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) located on land identified as Flood Zone A and having regard to the guidance set out in The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) that this portion of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) do not meet the criteria for inclusion under section 653B(c) of the Taxes Consolidation Act 1997, as amended. As it would be reasonable to consider that this portion of the lands are located on lands that are affected in terms of their physical condition by matters to a sufficient extent to preclude the provision of housing. I consider, having reviewed the documentation on file, submissions and grounds of appeal, that this portion of the lands should be removed from the final

map. On this basis I recommend that the board set aside the determination of the local authority and remove this portion of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) from the final map.

The remainder of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) located on lands zoned R1 are considered in scope of section 653B(a). The lands are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. The lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map. And I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) on the final map.

## **9.0 Reasons and Considerations**

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 section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The portion of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) located on flood Zone A do not meet the criteria for inclusion under section 653B(c) of the Taxes Consolidation Act 1997, as amended and should be excluded from the final map.

The remainder of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. This portion of the lands identified as WFD-C15-14 (Parcel ID WDLA00028856, WDLA00028871 and WDLA00028945) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

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

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Dáire McDevitt

Senior Planning Inspector

29<sup>th</sup> August 2023