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## Inspector's Report

### ABP-316425-23

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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

**Location**

Lands at Bawndaw and Ballynamona at Carrickphierish Road, Gracedieu, Waterford City.

**Local Authority**

Waterford City & County Council

**Planning Authority Reg. Ref.**

WFD-C15-43.

**Appellant(s)**

Kingscroft Developments Limited.

**Inspector**

Daire McDevitt

## 1.0 Site Location and Description

The lands identified as WFD-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200, WDLA000208) refer to lands at Bawndaw and Ballynamona on the northern and southern side of Carrickphierish Road in the northwestern suburbs of Waterford city.

The Notice of Determination noted the submitter as Wessel Vosloo. The Determination was issued to Kingscroft Developments Ltd c/o The Planning Partnership.

## 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 RE Regeneration with a stated objective 'to provide for enterprise and/or residential led regeneration'. Residential Use is permitted in principle.

The land is identified as Regeneration and Opportunity Site – Neighbourhood Centre, Carrickphierish (7 hectares). Vision: *Development of this infill site should provide strong architectural design as a key landmark development for Carrickphierish Neighbourhood. Create a mixed use medium/high density development on both sites with an emphasis on community, neighbourhood scale retail uses, apartments and residential city living; Any development on this site must provide for adequate open space and facilitate the development of a walkway/cycle route and green infrastructure links connecting the Carrickphierish Road and the IDA Industrial Estate to the south and surrounding residential developments. Provide a strong architectural response and be designed to an exceptional standard with a desirable street edge addressing the Carrickphierish Rad; The site has potential to accommodate taller building(s).*

Residential Phasing does not apply as per the Development plan.

### 3.0 Planning History

PA Ref. 22/541 refers to a decision to refuse permission for the construction of a mixed use development (96 no. dwellings and childcare facility, all totalling 12,359.60 sq m gross floor space) at a site of approximately 3.97 hectares. The development will consist of: 1. A single storey childcare facility (247.30 sq m gross floor space) with rooftop photovoltaic solar panel array, ancillary private outdoor play area (324 sq m), with set-down area (4 no. spaces) and dedicated vehicle parking/drop-off area (12 no. spaces). 2. A total of 96 no. dwellings (totalling 12,112.30 sq m gross floor space) ranging in equivalent height between single and three storeys with private open space, each with rooftop photovoltaic solar panel arrays and 2 no. car parking spaces (totalling 192 car parking spaces), comprising: 8 no. single storey two-bedroom semi-detached dwellings; 3 no. two storey three-bedroom terrace dwellings; 57 no. two storey three-bedroom semi-detached dwellings; 2 no. two storey four-bedroom detached dwellings; 2 no. three storey four-bedroom detached dwellings; 7 no. three storey four-bedroom terrace dwellings; 7 no. two storey four-bedroom semi-detached dwellings; and 10 no. three storey four-bedroom semi-detached dwellings. The development will further consist of boundary treatments, private and public open spaces, hard and soft landscaping, roads and pedestrian walkways, pedestrian accesses/permeability routes, services (incl. underground surface water attenuation storage), public lighting, and all other ancillary and associated site development works above and below ground level. Primary vehicular and pedestrian access to the proposed development will be provided via a new site entrance and access road from Carrickpherish Road. A Natura Impact Statement will be submitted to the Planning Authority with the application. Refused for 4 no. reasons (1) related to design/layout and poor relationship with a lack of defined edge along Carrickpherish Road, 2) failure to deliver a legible neighbourhood centre and distinct sense of place and character, lack of linkages, 3) layout/design/density contrary to 2009 Sustainable Residential Development Guidelines and 4) given site conditions and surface water drainage system the application did not demonstrate to the satisfaction of the pa that the proposed surface water measures would not create a risk of surface water flooding beyond the site.

PA Ref. 20/660 refers to a decision to refuse permission for the construction of a mixed use development at a site of approximately 5.25 Hectares. The development will consist of: 1; A mixed use Commercial Building with ancillary signage etc: 2. A mixed use retail and residential building 3. A single storey Childcare Facility with rooftop photovoltaic solar panel array, ancillary private outdoor play area and dedicated vehicle parking/drop –off area. 4. A total of 102 no dwellings with rooftop photovoltaic solar panel array etc. Car Parking and Bicycle parking spaces, Boundary Treatments, Private and Public open Spaces and associated site development works. A Natura Impact Statement will be submitted to the Planning Authority with the application. Refused for 5 no. reasons. 4 are similar to those for 22/541 and a fifth reason related to traffic hazard arising from conflict between vehicular and pedestrian traffic in relation to the adjoining school.

PA Ref, 10500168 refers to a 2010 grant of permission for mixed use developemtn. Permission expired in 2016.

Other application predating 2010 noted.

#### **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 WCCC refused permission on the lands in 2022 and 2020. Application in the process of being prepared in line with the RE zoning and the 2022 Development Plan. The land is not idle as it is the subject on ongoing planning.

#### **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 a mix of uses where residential development 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.
4. The lands are unoccupied and considered vacant or idle.

## **6.0 The Appeal**

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

Grounds of appeal are summarised as follows:

- The lands are not 'idle' as they are the subject of ongoing and active planning process that has sought, and continues to seek, to object a grant of planning permission for development incorporating residential development on the lands in line with the land use zoning objective.

- The landholding is currently physically affected/constrained by a land buffer in the ownership of WCCC which prohibit/limits road access to Carrickpherish Road. And the provision of a vehicular access via the existing road serving the school which is in the appellant's ownership would result in a traffic hazard due to vehicular/pedestrian traffic conflict (reason for refusal under 20/660).

## 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.

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 RE Regeneration where residential use is permitted in principle are considered within scope of section 653B(a)(ii).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. The relevant land in this instance includes building/areas of hard standing. Page 12 of the Guidelines set out that 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

The appellant has submitted that the lands are not idle as they were in the process of lodging a planning application and that the lands have been the subject of planning applications etc for the last number of years. The local authority in their assessment (checklist) considered the lands vacant/idle. The purpose of this report is to assess compliance with section 365B criteria as set out in the Determination made by the local authority. Based on the information on file the lands are vacant/idle as per the definition of vacant/idle set out in the legislation. Therefore I am of the view that the lands fall within the scope of vacant or idle as set out in the legislation.

The appellant has submitted that the landholding is currently physically affected/constrained by a land buffer in the ownership of WCCC which prohibit/limits road access to Carrickpherish Road. And the provision of a vehicular access via the existing road serving the school, which is in the appellant's ownership, would result in a traffic hazard due to vehicular/pedestrian traffic conflict (reason for refusal under 20/660). The local authority scoped the lands in noting no physical constraints.

The appellants have argued that there are issues regarding providing access to the site and history of refusal on traffic grounds. The refusal relating to traffic related to the use of an access road in the appellant's ownership (existing road serving the school) which result in a traffic hazard due to vehicular/pedestrian traffic conflict.

The appellants have set out that landholding is currently physically affected/constrained by a land buffer in the ownership of WCCC which prohibit/limits road access to Carrickpherish Road. The local authority scoped the lands in and I note did not raise access off the Carrickpherish Road via WCCC lands as an obstacle. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. The land can be served in principle by the existing road network that is in place. As with all development access will be assessed by the relevant planning authority through the development management process. And the applicant/ developer will be expected to provide for any internal road network necessary to serve the site and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the local authority.

The provision of infrastructure to the subject lands are considered to be in the control of Waterford City and County Council and Uisce Eireann. 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.

Having regard to the foregoing I consider that the lands identified as WFD-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) zoned RE meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of this portion of the lands from the final map.

## **8.0 Conclusion & Recommendation**

The lands identified as WFD-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) are located on lands where residential use is a permissible use in principle 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-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) 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-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) 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 lands identified as WFD-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) are located on lands zoned RE where residential use is permitted in principle, 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-C15-43 (Parcel ID WDLA000215, WDLA000188, WDLA000200,WDLA000208) 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

30<sup>th</sup> August 2023