



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316461-23

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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 Ballyvolane, Cork.

**Local Authority**

Cork City Council.

**Planning Authority Reg. Ref.**

CRK-RZLT-71.

**Appellant(s)**

O'Mahoney Development Ltd.

**Inspector**

Daire McDevitt.

## 1.0 Site Location and Description

The lands identified as CRK-RZLT-71 (Parcel ID CCLA00027455 and CCLA00027462) refer to lands at Ballyvolane, Cork.

The Determination was issued to Volane Lands Ltd.

## 2.0 Zoning and other provisions

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

The lands are zoned ZO 02 New Residential Neighbourhood (Map 12).

Identified as Tier 2 lands in Figure 2.21 'The Growth Strategy Map'.

Section 2.51 notes ' Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan'.

Section 12.14 'Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan'.

Section 4.122 the CNDR will provide an orbital route for bus, pedestrian and cycle and some strategic and general traffic and will reduce reliance on radial routes through the city centre.

### Cork MASP

Policy Objective 9(i)

- Cork Northern Distributor Road delivering a multimodal orbital public transport route, accessing planned development lands, connecting to radial distributor roads and providing connectivity at its western end to join the existing N22.

Objective 9(q)

- North East Orbital Road (access for residential lands and public transport infrastructure Ballyvolane).

## 3.0 Planning History

None noted.

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

Volane Lands Ltd (using same Planning Consultants as current appeal) made a submission to the local authority seeking to have their land removed from the draft map requesting that lands be excluded on the basis that 1) the lands are dependent on the final route selection of the Cork Northern Distributor Road (NDR). The final route selection may confirm that the NDR does not affect the appellant's lands but until it is established, the council advised (memo dated 28/09/2000) that development proposals on the lands are premature. 2) Correspondence from IW confirms that upgrade works are required to the wastewater network which consist of a new pumping station and rising main and a connection to the water network requires connection to a truck main on Dublin Hill and an extension required to facilitates such a connection.

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

The local authority determined that:

- The land is included in the Cork City Development Plan 2022-2028, in accordance with section 10(2)(a) of the Act and is further zoned (i) solely or primarily for residential use.
- These lands satisfy section 653(B) of the act, in that it is reasonable to consider that the land may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed an with sufficient service capacity for such development.

#### **6.0 The Appeal**

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

Grounds of appeal are summarised as follows:

- The Council advised the appellants that any application on the land is premature as it “has potential to have significant adverse effects on the provision of the Cork Northern Distributor Road”.
- Until this decision is resolved, it cannot be considered that the lands have access to all the public infrastructure necessary for dwellings to be developed.
- The assessment and decision by CCC did not take into account this and did not provide a satisfactory infrastructural assessment of the lands under section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax-Guidelines for Planning Authorities (June 2022).

## **7.0 Assessment**

The comments raised in the appeal are noted. The local authority has submitted a copy of the Determination. There is no reports/assessment on file.

The grounds of appeal have submitted that the local authority did not provide a satisfactory infrastructural assessment of the lands under section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax-Guidelines for Planning Authorities (June 2022).

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”.

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. While the lands are zoned ZO 02 New Residential Neighbourhood under the Cork City Development Plan 2022-2028 the lands are identified as Tier 2 lands in Figure 2.21 'The Growth Strategy Map'. Section 2.51 states "Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan" and Section 12.14 states "Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan". Correspondence from Uisce Eireann on file confirms that a watermain exists on the public road in close proximity to the site (c.80m away across Dublin Hill in an adjoining estate which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requires a new water connection from a trunk main on Dublin Hill. And that a sewer exists on the public road in close proximity to the site (c.80m away across Dublin Road in an adjoining estate which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requiring a PS (pumping station) and rising main. Therefore in this instance, as set out above while the lands may become available during the lifetime of the plan, they were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B(a)(i).

Notwithstanding that I consider the lands out of scope, I have assessed the grounds of appeal below as follows:

The grounds of appeal submit that the lands should be excluded as their development is premature pending a decision on the Northern Distributor Road as it cannot be considered that the lands have access to all the public infrastructure necessary for dwellings to be developed.

The provision of infrastructure to the subject lands are considered to be in the control of Cork City Council or Uisce Eireann and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map.

Correspondence from US confirms that a watermain exist on the public road in close proximity to the site (c.80m away across Dublin Hill in an adjoining estate which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requires a new water connection from a trunk main on Dublin Hill. UE confirmed that a sewer exists on the public road in close proximity to the site (c.80m away across Dublin Road in an adjoining estates which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requiring a PS and rising main.

For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is reasonable to consider that the provision of access, footpaths, public lighting, surface water drainage may be provided where land is in the control of the landowner or local authority. However as set out above the lands are not considered within scope of section 653B(a)(i) given the designation of the lands as Tier 2 which were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B(a)(i).

The appellant has argued that any application for development on these lands is likely to be considered 'premature' pending a decision on the northern distributor road and referred to pre-planning consultation notes dated 2021.

I have reviewed the Cork City Development Plan 2022-2028 and note there are no indicative routes or specific objectives shown on Map 12. I have also considered Cork MAPS and I draw the Board attention to page 10 of the Residential Zoned Land Tax-Guidelines for Planning Authorities 2022 relating to land required for infrastructure and community services states that '*where land is zoned for residential development and specific objective apply to provide such facilities but the extent of land required for such use is not identified, the land will fall within scope until such time as it is development and the relevant land will then fall out of scope.*'

The local authority in its Determination has not referenced any potential impacts the Cork Northern Distributor Road may have on the lands before the Board. Any planning application on the lands would be referred to the relevant authorities for comment. Having regard to the foregoing I am of the view that the grounds of appeal relating to this matter should be dismissed. Any development of the lands would have to have regard to any potential/proposed NDR and associated works and would be assessed on its own merits through the development management process. However as set out above the lands are not considered within scope of section 653B(a)(i).

## **8.0 Conclusion & Recommendation**

The lands identified as CRK-RZLT-71 (Parcel ID CCLA00027455 and CCLA00027462) are located on lands zoned ZO 02 New Residential Neighbourhood I and identified as Tier 2 lands in the Cork City Development Plan 2022-2028 and as such were not available for residential development at the time the local authority made its Determination. The land is not in-scope of section 653B(a)(i) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021).

I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as CRK-RZLT-71 (Parcel ID CCLA00027455 and CCLA00027462) 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 land identified as CRK-RZLT-71 (Parcel ID CCLA00027455 and CCLA00027462) are located on lands zoned ZO 02 New Residential Neighbourhood and identified as Tier 2 lands in in the Cork City Development Plan 2022-2028 and

as such was not available for residential development at the time the local authority made its Determination. The land does not comply with the criteria set out under section 653B(a) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021).

*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

7<sup>th</sup> September 2023