



An
Bord
Pleanála

Inspector's Report

ABP-316542-23

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 Abbeyside, Dungarvan, Co. Waterford
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-12
Appellant(s)	John Queally
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the eastern side of the Old Hospital Road, c. 900 metres north-east of the centre of Dungarvan. The site has considerable road frontage onto the Old Hospital Road to the west and Albury Avenue to the south-west. The lands which are subject to this appeal include Land Parcel ID, Ref. WDLA00028905 and have an overall estimated site area of 4.76 hectares. The lands further to the south comprise of medium density residential developments.
- 1.2. It should be noted that there is 1 no. other concurrent RZLT Appeal in the general locality of the subject site, as follows:
 - Appeal Ref. No. 316555-23: Thomas Moloney. Lands located c. 150 metres to the north of the subject site.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'R1 – New Residential' in the Waterford City and County Development Plan 2022 to 2028 and is included within Residential Phase 2. The relevant zoning objective is *'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'*
- 2.2. As per the Zoning Matrix (Table 11.2) set out in Section 11.0 Zoning and Land Use of Volume 2 – Development Management Standards, a Dwelling / Principal Private Residence and a Residential scheme are identified as uses which are 'Permitted in Principle' on lands zoned R1 (New Residential).
- 2.3. In respect of the Tiered Approach to Zoning, the following is stated in Section 2.11.2 of the Waterford City and County Development Plan, 2022 to 2028, Volume 1 – Written Statement in relation to lands identified as Residential Phase 2:

'The method of land use zoning employed in this Development Plan focuses on delivering the strategic outcomes and priorities of the NPF for Waterford City and County. The approach taken considers the provisions of NPO 72(a), (b) & (c) of the NPF4, paying particular attention to the infrastructural services available, thereby adopting a Tier 1 and Tier 2 approach to the release of land for residential development during the life of the plan. This has avoided the inappropriate zoning of land for development where such land cannot be

serviced during the life of the plan. Appendix 14 of the Development Plan sets out the notional cost of addressing infrastructural deficits which will be required to be addressed prior to Tier 2 lands being available for development during the life of this Development Plan.

Section 6 and SPPR DPG 7 of the consultation draft Development Plans: Guidelines for Planning Authorities (August 2021) identifies how lands which are suitable for residential development can be tiered/ phased or prioritised in the Development Plan. This sequential approach develops further the Tiered Approach to Zoning and gives due cognisance to the principles of compact growth and utilisation of existing infrastructure as set out in the NPF and RSES.

In a manner consistent with SPPR DPG 7, the new residential land use zoning (R1 GZT) provisions of the Plan are defined as either phase 1 or phase 2 lands as per the series of maps below. Generally, save for the phase 2 lands identified in the maps, all other R1 zoned lands can be taken as being phase 1.

In addition to the provisions of the Guidelines and the sequential approach to development, the phasing approach set out in the Plan also takes cognisance of the unique pattern of land ownership across our larger urban settlements, the likelihood of development lands coming to market, the availability of services and development activity in the area. The phasing approach seeks to ensure that development on larger land holdings follows a sequential pattern and in this regard the following should be noted:

- All lands zoned for new residential development (R1) are considered to be developable during the lifetime of the Development Plan.*
- R1 zoned lands not specifically identified as phase 2 shall be considered phase 1.*
- Within any landholding all phase 1 lands shall be developed or committed to development prior to any development being proposed/permitted on phase 2 lands within that landholding.*
- All planning applications for development on phase 2 lands shall be supported by documentation to clearly identify that phase 1 lands within the landholding have been developed out, are committed to*

development and that the implementation of any such permitted development is imminent, or that phase 1 lands are not available within the landholding.'

2.4. Appendix 17 of the Waterford City and County Development Plan, 2022 to 2028 relates to a Tiered Approach to Zoning. This includes a site-specific Infrastructure Assessment for relevant lands. The site which is the subject of this appeal forms part of Site 1 (Monag), see Table 5B: Dungarvan/ Ballinroad Phase 2 Site Specific Infrastructure Assessment. The site (Site 1) scores 1¹ in relation to Roads, Water Supply and Wastewater and scores 2² in relation to Footpaths. It is further indicated that the overall site does not fall within the definition for lands qualifying as necessitating Compact Growth³ or where Public Transport⁴ is available. The lands are identified as lands where a Coordinated Approach⁵ to development is required.

2.5. Specific Objective DO22 relates to the lands and reads as follows:

'To secure the sustainable and sequential longer-term development of lands at Monang, located between the Old Hospital Road and the N25, development of tier 2 residential lands shall be informed by and consistent with a masterplan, the scope and detail of which shall be agreed in writing with the planning authority prior to the masterplan being prepared.'

2.6. There is an Indicative Road Reservation shown on the Dungarvan Land Use Zoning Map which relates to the subject lands. The Indicative Road Reservation route relates to the roadside frontage to the west along the Old Hospital Road and is shown to dissect the southern part of the subject site from west to east and connects with lands further to the south-east and eventually to an existing round about on the N25 further to the south-east.

¹ Score 1: Existing infrastructure can support the development of the site, subject to on-site works, some minor works at access points or linking into available existing systems.

² Score 2: Some off-site works are required but could be delivered as part of a planning application to develop the site or capital investment is identified to facilitate development over the course of the plan.

³ Compact Growth: Proximity to the town centre and services – distance of no more than 1km or 5 min walk from the town and neighbourhood centre is desirable.

⁴ Public Transport: Whether public transport modes are available within proximity of the site or connected walking & cycle routes provide easy access to public transport and services.

⁵ Coordinated Approach: That the development of the land will contribute to or complete the strategic development of the wider area.

2.7. The Transport and Land Use Zoning Map is stated to show *'the transport objectives and reactional routes overlaid with land use zoning which gives a more depth understanding to both layers.'* An indicative Road Route *'To Cork Via the N25'*, is shown to traverse the County from the County Boundary with Cork in the south-west to Waterford City in the east of the County. This indicative Road Route traverses the southern portion of the subject site from west to east.

2.8. Motorway and National Roads Policy Objective, Trans 40, Trans 42 and Trans 43 reference the N25 and read as follows:

'Trans 40: We will support the role of TII with regard to the upgrade of existing National Routes, such as the Dungarvan Bypass (N25) and Dungarvan to Mallow upgrade (N72), and where appropriate restrict development immediately adjacent to national routes and interchange[s] in order to facilitate future enlargement of the Interchange.'

'Trans 42 In order to protect the future safety and carrying capacity of the N25 approach road to Dungarvan from Waterford City, new access points for single dwellings will be prohibited within the speed limit zone up to Coolagh Road Roundabout. It is the intention of that strategic access points and road provision will be considered in the Dungarvan Local Area Plan. The Councils preference is that future access points within land banks east and west of the N25 within this area are provided by alternative road provision and not from the N25.'

'Trans 43 The Council will seek to conduct a strategic review of the N25 with a view to identifying locations for upgrading the existing national route to provide grade separated junction and reduce the hazardous right-hand turn movements.'

3.0 **Planning History**

3.1. Planning History

3.2. Planning Reg. Ref. No. 05510084 (ABP Appeal Ref. No. NOT AVAILABLE): Messrs. Ruden Homes. Permission for 175 No. dwelling houses, 1 No. creche with 4 No. overhead apartments. REFUSED on 30/12/2007 following an appeal to An Bord Pleanála.

- 3.3. Planning Reg. Ref. No. 04510033: John Queally. Permission for 125 no. dwellings. Permission was REFUSED on 06/09/2004.
- 3.4. Relevant Planning History in the general locality
- 3.5. Lands to the immediate North of the subject site.
- 3.6. Planning Reg. Ref. No. 21/684 (ABP Appeal Ref. 312822-22) (Site located to the immediate north-west of the subject site): Applicant: John Deane & John Ruane. Permission for 6 detached two storey houses and 1 detached two/one storey house, access roads and ancillary site works. A Notification of Decision to GRANT permission was issued by the Local Authority on 27/01/2022 subject to 26 no. conditions. This decision is the subject of a current appeal to An Bord Pleanála. The Appeal case was due to be decided by 27/06/2022 and is now overdue.

4.0 Submission to the Local Authority

- 4.1. The Appellant made a submission to the Local Authority seeking to have their land removed from the draft map.
- 4.2. The lands are not vacant or idle but are integral to a business carried out on it. These lands have been utilized for agricultural farming enterprises for upwards of the last 100 years.
- 4.3. The Appellant is operating a Farming Business and a Horse Racing Yard on these lands and all lands are utilized on a full-time basis for the training and maintenance and grazing of racehorses. The lands have been utilized for these purposes for upwards of the last 40 years.
- 4.4. The lands are vital to the ongoing commercial viability of the Appellant's horse rearing and training enterprise. The Appellant has very recently incurred considerable significant expenditure on upgrading of the holding. The loss of any of the Appellant's lands would be fatal to the running of the business as a going concern. The land is integral to the running/ viability of the business.
- 4.5. The area zoned is contiguous to an intensively worked farm proximate to the farmyard, stables and farm building and the site is recognised and mapped by the Dept. of Agriculture for payment of agricultural entitlements and subsidies. The site forms part

of a land holding of 33 acres approximately with an adjoining farmhouse where the Appellant resides.

- 4.6. Without prejudice to the foregoing, it is also submitted that the zoned lands are not properly serviced. These lands would require very significant investment in terms of road infrastructure, footpaths, public lighting, surface water, wastewater, and water supply.
- 4.7. Very significant investment would be required to ensure that the lands conform to the required serviced lands criteria.
- 4.8. The Appellant has never sought or solicited the designation of the lands for development purposes and such designation was completed with his knowledge or consent. Lands have been exclusively used for agricultural purposes. The reclassification of the lands for any other purpose would be in absolute and clear contract [SIC] with the Appellant's established user and indeed his predecessors in title established user of these lands for upwards of 100 years.
- 4.9. The Appellant does not accept that here is adequate public infrastructure or facilities available to service the lands in question.
- 4.10. 17 acres of the holding were disposed in or about 2006. This site forms part on which planning permission was granted to a named developer. The said lands are situated in the townland of Monkeal, Abbeyside, Dungarvan, Co. Waterford. The Appellant submits that he has already made a very significant contribution to the provision of zoned lands in the area, but at this juncture to further zone lands, the subject matter of the proposed Application would make no sense whatsoever.
- 4.11. The Appellant is an established Horse Trainer and has provided employment of significance in the area. The development of housing contiguous to his activities will be inconsistent with the ongoing viability of the Appellant's business.
- 4.12. The Appellant has included a map and refers to a portion of the lands retained by him and registered in his name. The lands are outlined in blue on the said map. The Appellant states that if the current zoning of the lands is upheld, then the portion of the lands registered in his name will be rendered completely inaccessible to him. There is no independent means of access to the said lands. This is unacceptable to the Appellant. His right of access cannot be compromised.

5.0 Determination by the Local Authority

5.1. Having evaluated the submission and all relevant information relating to the land(s), it is considered that the land(s) DOES satisfy the qualifying criteria as per Section 653E (1) (a) (ii) (I) of the Finance Act 2021, as amended, for the reasons set out below, and therefore it is recommended that the land(s) at the above location should be INCLUDED in the final map.

5.2. Reasons

5.3. 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.

5.4. 2. The lands are zoned for residential development where a residential use is permitted on principle in the development plan.

5.5. 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.

5.6. The Local Authority determined that the site was in scope and should remain on the map.

6.0 The Appeal

6.1. Grounds of Appeal

The Grounds of Appeal are summarised as follows:

- Grounds for Exclusion
 - Section 653B c) (i).
 - Business Premises. A Business Premises, as per the Planning and Development Regulations, 2001 to 2023, Article 5 (1) in not limited to a 'structure' but also covers the land associated with the operation of the business. The Appellant's horse breeding and rearing business is a professional business and is a commercial undertaking paying commercial rates and thus any structure and

other land associated with this undertaking is part of the 'business premises' in line with Article 5 (1) a) of the Regulations. The Appellant's 'business premises' includes stables, gallops and the lands on which he trains, races and keeps the horses.

- Services to Residents of adjacent residential areas. It is reasonable to consider that the Appellant's business provides services to residents of adjacent residential areas, primarily the service of training their horses. The Appellant's business provides this service to a range of Clients including local residents from across the community, many of whom have availed of this service for years. The Business also provides for the upskilling/ training of young people who have an interest in the equestrian industry and are considering pursuing it as a profession. The Appellant is also an important employer in the local community. The Appellant's premises thus meets the as quoted provisions of Section 653B c) (i) of the Act and should be excluded from payment of the RZLT. The Appellant questions the limited Local Authority Assessment and the assumptions made in stating there is no trade or profession carried out on the lands, incorrectly referencing a 'day to day' service and in grouping Steps 3 and 4 together when they are in fact exclusive of one another under the Act.
- Day to Day Service. The Appellant quotes an extract from Section 653 B c) i) of the Act, i.e. '*it is reasonable to consider is being used to provides services to residents of adjacent residential areas*'. The Appellant states that there is no reference to a day-to-day service nor is a definition of such a service provided. The Appellant states that if the requirement is that such a service is provided on a daily basis then the business meets this criteria, as horse training is a 365 day a year service, with horses being cared for and trained daily.

- Steps 3 & 4. The Local Authority erred in jointly assessing Step 3 and Step 4 when they should have been assessed exclusively as they serve two different purposes under legislation.
- Analysis of the Application of the RZLT to Business Premises.
 - Lands integral to Appellant's Business.
 - The Appellant's Business, in this regard, is no different to multiple other businesses where the business premises consists of a structure(s) and associated land, as per Article 5 (1) of the Regulations.
 - The example of a logistics warehouse business premises is referenced. The structure and other lands in that case are integral to the operation of the business.
 - In applying the RZLT the entire business premises, i.e. structure(s) and the associated lands, is considered to be part of the commercial rates paying business. This approach has been also applied in the case of lands zoned for a mix of uses, where the entire business premises is considered in terms of the land being in 'use'.
 - This approach has also been adopted on multiple sites within Dungarvan which are residential led regeneration, i.e. coming within Section 653B a) i), with these sites excluded from the RZLT.
 - The Appellant provides examples of other mixed-use zones sites where 'active use' extends to the business premises, including structures and lands. The Appellant has provided examples of 2 no. sites in Dungarvan, 1 no. site in Tallaght, 1 no. site in Nenagh and 1 no. site in Athlone where the relevant sites or entire sites have been excluded from the Draft RZLT maps.
 - The Appellant draws a direct comparison between the Appellant's Business Premises and the stated examples as the operational requirements include a structure as well as other land, without

which, the Appellant states it is not possible to breed and train racehorses and showjumpers.

- The Appellant's rate paying business could not function without all the constituent elements that make up his premises, i.e. stables, gallops, fields for training and keeping horses.
- The Local Authority should have determined that the subject lands meet the exclusion criteria set out under Section 653B c) i).
- Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022
 - The Appellant makes a distinction between the non-rate paying business of agriculture and horticulture versus horse breeding and training which is stated to be subject to commercial rates. Commercial rates being paid is the key determining factor under Section 653B c) i).
 - Distinction made between structure and premises.
- Land In or Out of Scope
 - Appellant's Livelihood is at stake.
 - Notwithstanding this, the subject lands are considered to be out of scope. Step 2 of the Local Authority Assessment is referenced. The capacity of the existing infrastructure in terms of
 - road infrastructure capacity,
 - Water, Wastewater and Surface Water Capacity,

7.0 Assessment

7.1. The comments raised in the appeal are noted.

7.2. Land Parcel ID, Ref. WDLA00028905 has an approximate site area of 3.11 hectares. The Local Authority determination solely relates to this said Land Parcel. The Appeal relates to this Land Parcel and the adjacent Land Parcel located to the immediate

east, see Land Parcel ID, Ref. WDLA00028867. The Appeal site, as defined by the site redline boundary as shown in figure 3 of the appeal submission, relates to a large open L shaped field and does not include any structures. There is a Horse Gallops in the adjacent field to the east and the Appellant's farmyard/ stables are located further to the east. It is stated in the appeal that the lands are subject to commercial rates as part of the Appellant's business premises.

- 7.3. The subject lands are zoned for residential use, Residential Phase 2. There are no Residential Phase 1 lands within the landholding. An application for residential development on the lands can therefore be considered by the Planning Authority having regard to the Guidance provided in Section 2.11.2 of the Plan, as quoted above in Section 2.3 of this Report.
- 7.4. Uisce Eireann confirm that a watermain exists on the public road in close proximity to the site and that available GIS data indicates that the watermain is accessible (c. 10m distance away) via the Old Hospital Road adjoining the land parcel.
- 7.5. It is noted the Dungarvan water resource zone (WRZ ID: 3100SC0001) is stated to have Capacity Available - LoS improvement required (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').
- 7.6. In my opinion there is a viable water supply/ connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of water supply.
- 7.7. Uisce Eireann further confirm that a sewer exists on the public road in close proximity to the site and that available GIS data indicates that the sewer is accessible (c. 10 m distance away) via Albury Avenue adjoining the land parcel.
- 7.8. It is noted the Dungarvan Wastewater Treatment Plant (Ref. D0017) has a Green Status on the current Uisce Eireann Wastewater Treatment Capacity Register. Green status is stated to mean 'spare capacity available.'
- 7.9. In my opinion there is a viable wastewater connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of wastewater.

- 7.10. There is an existing surface water sewer in place at the adjacent residential development to the south, Albury Avenue. In my opinion, it is reasonable to be considered that the site can be connected to this said surface water drainage system and, in the absence of any definitive evidence to the contrary, that there is sufficient service capacity available for same.
- 7.11. The south-eastern corner of the site is shown to be within Flood Zones A & B. This, in of itself, is not considered to preclude residential development on the overall landholding.
- 7.12. Section 3.1.2 of the Residential Zoned Land Tax, Guidelines for Planning Authorities, June 2022 provides specific guidance in relation Exclusions from the Map. The Appellant's stated Horse Breeding and Training Business is not, in my opinion, providing a service to the existing or future residential community, as described in the Guidelines, Section 3.1.2 (Operating Uses on Residential Zoned Lands).
- 7.13. It is noted that the training of horses and the rearing of bloodstock falls within the definition of 'Agriculture'⁶ as set out in the Planning and Development Act, 2000 to 2023. The Guidelines state that the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. The site which is the subject of this appeal, in my opinion, constitute agricultural lands and are in use for agricultural purposes.
- 7.14. The Local Authority has assessed Land Parcel ID WDLA00028905 as not being liable for Commercial Rates, see Step 4 (ii) of the Local Authority Assessment. The Assessment does not extend to other lands outside of the said Land Parcel (ID WDLA00028905). Notwithstanding this issue, the Guidelines state that the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. In the absence of any definitive information as to the extent and nature of the said Commercial Rates being paid, I am not satisfied that any such Commercial Rates extend to and include the lands which are subject to this appeal. On this basis, the lands subject to this appeal should remain in scope.

⁶ "Agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

- 7.15. There is an Indicative Road Reservation shown on the Dungarvan Land Use Zoning Map which relates to the subject lands. The Indicative Road Reservation route relates to the roadside frontage to the west along the Old Hospital Road and is shown to dissect the southern part of the subject site and connect with lands further to the south-east and eventually to an existing round about on the N25 further to the south-east.
- 7.16. A separate indicative Road Route 'To Cork Via the N25', is shown to traverse the southern portion of the subject site from east to west. This route is, in my opinion, 'indicative' as opposed to identifying a preferred route option for a future N25 Route or Dungarvan Outer Bypass Route.
- 7.17. Having regard to the Guidance provided in Section 3.1.2 of the Guidelines, under the heading of Land Required for Infrastructure and Community Services, I am satisfied, notwithstanding the presence of an Indicative Road Reservation Route through the subject lands, that the lands should remain in scope.
- 7.18. The remaining Grounds of Appeal do not relate to any of the relevant qualifying criteria set out in Section 653B of the Act.

8.0 Conclusion

- 8.1. The site is 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 for residential purposes. The site does satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the Local Authority and that the indicated site be retained on the map.

10.0 Reasons and Considerations

- 10.1. The lands identified as WFD-C15-12 (RZLT Map Parcel ID: WDLA00028905 & WDLA00028867), 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.

- 10.2. Having regard to the provisions of Section 653B b), it reasonable to conclude that the site 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 and with sufficient service capacity available for such development.
- 10.3. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.4. 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.

Frank O'Donnell
Planning Inspector

31st August 2023