



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316551-23

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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 Ferrybank, Waterford City.
<b>Local Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	WFD-C15-34.
<b>Appellant(s)</b>	Seamus Walsh of Kilkenny Walsh Limited, Waterford Castle Hotel and Golf Club Limited.
<b>Inspector</b>	Daire McDevitt

## **1.0 Site Location and Description**

The lands identified as WFD-C15-34 (Parcel ID WDLA000194) are located at the former Ard Ri. Also referred to as the 'Ard Ri site' refers to lands at Ferrybank in Waterford City.

There are concurrent RZLT appeals under ABP 316599-23 by Seamus Walsh of Invisible Structures Ltd, Waterford Castle Hotel and Golf Club Limited for lands at the Oaklands, Ballinakill, Waterford and by Seamus Walsh of Invisible Structures Ltd, Waterford Castle Hotel and Golf Club Limited under ABP 316596-23 for lands at Kilbarry, Waterford.

## **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 'to provide for enterprise and/or residential led regeneration.

Regeneration and Opportunity Site – The Former Ard Ri Site, Dock Road. Vision: Development on this strategic brownfield site should provide strong architectural design as a key landmark/gateway to Waterford City; Future developments shall comprise a high quality design complementing the North Quay planning scheme; Development on this site should be mixed use high density with emphasis on tourism, apartments and city living; Development should maximise the sites elevated location Residential Phasing set out in the Plan does not apply.

### 3.0 Planning History

There is extensive planning history associated with the Ard Ri Hotel. This includes PA Ref. 03500308 refers to a 2003 planning application refers to a grant of permission 1) Replacement of existing windows to front elevation (1st to 5th floors incl.) 2) Addition of 4 No. projections to the front elevation (1st to 4th floors incl.) to extend circulation space and extend 40 No. bedrooms, 3) addition of brise soleil louvres to the front elevation (1st to 5th floors incl.) and 4) Addition of feature roofs and wall cladding to existing roof top plant rooms.

PA Ref. 08500202 refers to a 2009 decision to refuse permission for a 10 year planning permission on a 1.62 Hectare/4.00 Acre site. The planning permission seeks to construct a mixed use development to comprise the following:- 1) Block A, a building ranging in height from 7 to 13 storeys, which has office & retail uses, an underground car park that is accessed through the proposed hotel car park & includes 199 parking spaces. The car park is exited onto the main artery road to the north of the block. 2) Block B, a building ranging in height from 9 to 17 storeys. This building is an 208 bed hotel, with 24 no. serviced apts, 8 meeting rooms, conference centre, leisure centre, bar & restaurant facilities. In addition the proposed hotel has 855 m<sup>2</sup> of retail accommodation fronting onto N25 Dock Road with an adj. access from the N25 to an underground car park which includes 198 no. parking spaces. car park is joined below ground to the adjacent office/retail building. 3) Block C, a building ranging in height from 3 to 12 storeys. This building is a mixed use building. which comprises a 1171 m<sup>2</sup> cafe, 393 m<sup>2</sup> of retail accommodation, 12. professional units with a total area of 2529 m<sup>2</sup>, 14 no. live/work units with a total floor area of 2308 m<sup>2</sup>, 3721 m<sup>2</sup> of office accommodation & 16 no. 1 bed, 7 no. 2 bed & 8 no. 3 bed apts, (31 no. in total). parking is located below ground with access from the southern side off the main artery road & includes 75 no parking spaces. 4) For the provision of a new signalised junction onto the N25 Dock Road from the south-eastern side of the site. 5) An environmental Impact statement (EIS) submitted with the application.

The total development comprises a 208 bed hotel, with 24 no serviced apartments, 8 meeting rooms, conference centre, leisure centre, bar & restaurant facilities. 5013 m2 of retail accommodation 14 no live/work units with a total area of 2308 m2, 12 no professional units with a total area of 2529 m2, 22477 m2 of office accommodation, a Cafe with a total area of 1171 m2, & a total of 31 residential units which include 1,2 & 3 bed apts. Parking is below ground with total No of 472 parking spaces 5 ESB sub-stations, landscaping & all ancillary site development works.

#### **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 are the subject of ongoing legal dispute and as such cannot be developed until this is resolved.

#### **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 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.
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 site is zoned as an opportunity site which permits residential development. The portion of the appellants landholding (The Ard Ri and associated grounds) is partly within WCCC boundary and is the subject of ongoing legal ownership dispute.
- The site is not 'vacant/idle' as consent cannot be applied for or granted by the Council without the consent of the legal owner. The legal owner will not be established until the findings of the Commercial Court on the matter are known.
- The site cannot be fully serviced until the legal status of the property has been resolved.
- It is submitted that if there was no legal dispute the appellant would be able to re-enact the previous hotel use which was never abandoned.
- Unclear if the Council received information from UE or the Roads Authority.

## **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 grounds of appeal set out that the lands should be excluded as the lands identified as WFD-C15-34 (Parcel ID WDLA000194) are the subject on an ongoing legal dispute regarding ownership.

The RZLT Guidelines clearly set out that in the preparation of the RZLT maps, the local authority does not need to establish who the owner(s) of the lands are in order to include lands on the draft, supplemental or final map. Any appeal relating to the inclusion of land on the RZLT map should be made by the relevant landowner. I note that the grounds of appeal have referred to a legal dispute regarding a portion of the lands. Based on the information available I have no reason to consider the appeal invalid on the ground of ownership.

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". Legal disputes relating to the ownership of lands or portion of the lands is an issue for the courts and beyond the remit of this report which is restricted to considered section 653B of the Taxes Consolidation Act 1997 as amended.

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 portion of lands zoned RE where residential use is a permissible use are considered within scope of section 653B(a)(ii). The appellants submit that the site is not 'vacant/idle' as consent cannot be applied for or granted by the Council without the consent of the legal owner. The legal owner will not be established until the findings of the Commercial Court on the matter are known. And it is submitted that if there was no legal dispute the appellant would be able to re-enact the previous hotel use which was never abandoned.

Section 653B(c)(ii) sets out but which is not 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 the former Ard Ri Hotel which is vacant. Page 12 of the Guidelines on Residential Zoned Land Tax – Guidelines for Planning Authorities June 2022 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 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 considered vacant/idle as per the definition of vacant/idle set out in the legislation

The appellants have submitted that the site cannot be fully serviced until the legal status of the property has been resolved. The local authority determined the lands to be in scope as it is reasonable to consider that the land has access to, or be connected to, services.. The provision of infrastructure to the subject lands are considered to be in the control of Waterford City & County 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. I also note the former use as a Hotel had access to services.

The lands can be served in principle by the existing road network that is in place. 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-C15-34 (Parcel ID WDLA000194) 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 the lands from the final map.

## **8.0 Conclusion & Recommendation**

The lands identified as WFD-C15-34 (Parcel ID WDLA000194) are located on lands where residential use is permissible 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 WFD-C15-34 (Parcel ID WDLA000194) 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-C15-34 (Parcel ID WDLA000194) 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-C15-34 (Parcel ID WDLA000194) are 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. The lands identified as WFD-C15-34 (Parcel ID WDLA000194) 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

4<sup>th</sup> September 2023