



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316553-23

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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 Map
<b>Location</b>	Lands at Lacken Road, Kilbarry, Waterford City.
<b>Local Authority</b>	Waterford and City County Council
<b>Local Authority Reg. Ref.</b>	WFD-C15-40
<b>Appellant(s)</b>	MMM Limited
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

- 1.1. The site which is the subject of this appeal is located in the townland of Kilbarry, on the eastern side of the Lacken Road, c.2.65 km to the southeast of the edge of the centre of Waterford City. The site is located to the rear/ east of lands which front directly onto the Lacken Road to the west and are stated to form part of a wider 13ha landholding. The subject site, which includes Land Parcel ID (s) WDLA00028912 & WDLA00028869 is estimated to have a site area of c. 8.50 hectares.
- 1.2. There is an existing agricultural field entrance and laneway along the southern boundary of the subject appeal site. This access road forms part of the adjacent Land Parcel ID: WDLA00028957. The LIHAF Road is constructed to within 65 metres to the south of this existing agricultural entrance.
- 1.3. It should be noted that there are 2 no. other concurrent RZLT Appeals in the general locality of the subject site, as follows:
  - Appeal Ref. No. 316647-23: Kilbarry Developments Ltd. Lands located to the to the immediate south of the subject site.
  - Appeal Ref. No. 316917-23: Frisby Homes. Lands located to the to the immediate west of the subject site on the opposite west side of the public road.

## 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. The relevant zoning objective is to *'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'*
- 2.2. The western side of the land holding is sand is identified within Residential Phase 1 with the remaining eastern side/ rear identified as Residential Phase 2.
- 2.3. 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).

2.4. 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.'*

2.5. 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 18 (Kilbarry (Lacken Road East)), see Table 4A: Waterford City Phase 1 Site Specific Infrastructure Assessment. The site (Site 18) scores 1<sup>1</sup> in relation to Roads, Footpath, Water Supply and Wastewater. It is further indicated that the overall site falls within the definition for lands qualifying as necessitating Compact Growth<sup>2</sup>, where Public Transport<sup>3</sup> is available and where a Coordinated Approach<sup>4</sup> to development is required.

2.6. Specific Objective DO26 relates to the lands and reads as follows:

*'DO26 – Kilbarry – Sections of new residential lands (Phase 1 & Phase 2) to the east of the Lacken Road L5522 and which are in close proximity to Kilbarry Bog pNHA may facilitate Low Residential Development/ Serviced Sites.'*

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Coordinated Approach: That the development of the land will contribute to or complete the strategic development of the wider area.

2.7. There is a Transport Objective shown to traverse the lands from west to east, as follows:

Transport Objectives:	4
Class:	4
Location:	Waterford City
Type:	Proposed Active Travel & / or Public Transport
Development Plan:	WCCC Development Plan, 2022 to 2028

### 3.0 Planning History

#### 3.1. Planning History on the subject site

3.2. 2360285: Rio Real Properties Limited. Permission for 97 houses. A Request for FURTHER INFORMATION was issued on 22/08/2023 on 10 no. items relating to

- 1. Road Design/ DMURS Compliance
- 2. Design/ Layout
- 3. Surface Water/ Sustainable Urban Drainage System (SuDS)
- 4. Revision of NIS to take account of Sustainable Urban Drainage System (SuDS)
- 5. Revised proposal for a suitably sized childcare facility
- 6. Revised site layout/ hedgerow removal/ boundary treatments/
- 7. Revised Section Drawings/ existing and proposed levels
- 8. Submit a Response from Irish Water to pre-connection enquiry i.e., confirmation of feasibility for connection to water and wastewater networks.
- 9. Revised Landscaping Plan
- 10. Archaeological Impact Assessment Report

#### 3.3. Planning History on adjacent lands to the immediate west

3.4. 00506184: Mr. Richard Hogan. Permission to make an entrance and erect gates. Permission was GRANTED on 07/06/1985.

- 3.5. 00506059: Mr. Michael Corcoran. Permission for entrance to land. Permission was GRANTED on 07/12/1984.
- 3.6. 00505478: Mr. Richard Crowley. Permission for a Dormer Type bungalow. Permission was REFUSED on 28/04/1983.
- 3.7. 00505477: Mr. Richard Hogan. Permission for a Dormer type bungalow. Permission was REFUSED on 28/04/1983.
- 3.8. 00503587: J.G. Hearne. Permission for the erection of a temporary office building. Permission was GRANTED on 11/05/1977.
- 3.9. Lands to the immediate west of subject appeal site.
- 3.10. P803/17: Part 8 Local Authority Development. Development of a Distributor Road at Kilbarry. Consented.

#### **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 submission is summarised as follows:
- 4.3. The property is zoned 'Residential' in the current Development Plan.
- 4.4. The property cannot be developed for housing until permission is granted for the development of the next stage of the LIHAF road to the south of the existing site access. Likewise, the site cannot be serviced until the road is in place as the services will be provided under the road.
- 4.5. The Appellant recently met with a Local Authority Planning Department Representative who confirmed the Council owned and had control of the land to develop the section of road required to serve the property.
- 4.6. The Appellant will not be liable for RZLT until agreement is reached on the delivery of the road and services, which they are prepared to contribute towards.
- 4.7. Confirmation is requested that the property will not be subject to RZLT at this time and that it will be removed from the RZLT map until the lands are serviced.

## 5.0 Determination by the Local Authority

- 5.1. It should be noted that the Local Authority determination relates to Land Parcel IDs: WDLA00028957, WDLA00028869 & WDLA00028912.
- 5.2. 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.
- 5.3. Reasons
- 5.4. 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.
- 5.5. 2. The lands are zoned for residential development where a residential use is permitted on principle in the development plan.
- 5.6. 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.
- 5.7. 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

- 6.2. The Grounds of Appeal are summarised as follows:
- The property forms part of a wider 13ha landholding. The remaining land is to the east and is not zoned for residential or mixed-use development.
  - The property in question is zoned 'Residential' in the current Development Plan.
  - The property cannot be developed for housing until permission is granted for the development of the next stage of the LIHAF road to the south of the existing

site access. Likewise, the site cannot be serviced until the road is in place as the services will be provided under the road.

- The Appellant recently met with a Local Authority Planning Department Representative who confirmed the Council owned and had control of the land to develop the section of road required to serve the property. The Appellant states that an application is expected to be made in the coming weeks, but with no guarantee if and when the road can be delivered. Housing currently being constructed under planning permission ref: 18/895 and 18/986 (as amended by 22/260) on the opposite side of the LIHAF road was held up for over 12 months while the section of the LIHAF road and associated services (water, foul and storm water) sewers were developed. The services with all these houses will be gravity fed.
- The consent, finance and timeframes required to develop the section of LIHAF road necessary to serve the lands in question is completely outside the control of the appellant. In addition, unlike the housing currently being developed opposite by others, which is all gravity fed, it will be necessary for the foul and storm sewers on the lands in question to be served by a pumping station. The Appellant will be proposing a pump station on his land, but Irish Water could insist on a shared single pump station, which would be that already permitted on the land to the south. That would require negotiations with the owners of that site.
- The Evolution Report by the planning authority for the lands that were the subject of the Appellants previous submission related to more land than the appellant owns. The evaluation incorrectly included the lands referenced WDLA00028957. It is over this parcel of land that a further stretch of the LIHAF road will be developed.
- The Appellant considers that the land they own is currently out of scope for connection to roads, footpaths public lighting, surface water, wastewater and water supply and should not be included in the final plan.
- Reason 3 of the Determination of the Local Authority Assessment Report that the lands currently have access to these services is incorrect and the Appellant will not have access to these services until they are brought to the Appellants land by others.



- The Evolution Report assessment was flawed with the inclusion with land outside the Appellants ownership.
- The Appellant will not be liable for RZLT until agreement is reached on the delivery of the road and services, which the Appellant has indicated it is prepared to contribute towards.
- The Board is requested to uphold this appeal and determine that the subject site should be excluded from the map of lands to be subject of the tax.

## 7.0 **Assessment**

- 7.1. The comments raised in the appeal are noted.
- 7.2. It is noted that the current planning application before the Local Authority, which pertains to the subject lands includes a section of new road along the Lacken Road (LIHAF) Road to the west, see Planning Reg. Ref. No. 2360285 and, in particular, see the proposed Master Plan Drawing, PP-03 and the Planning Pack Map Site Location Drawing, PP-02, both received by the Local Authority on 30/06/2023. The said drawings include a proposed section of the LIHAF Road to the west. This section of LIHAF Road forms part of the consented LIHAF road, as P803/17 refers.
- 7.3. The said application is accompanied by a Letter of Consent from the Local Authority dated 9/06/2023 relating to the LIHAF Road.
- 7.4. There is an existing agricultural field entrance and laneway along the southern boundary of the subject appeal site.
- 7.5. In my opinion it is reasonable to considered that the subject lands satisfy the provisions of Section 653B b) of the Act in terms of access.
- 7.6. An Uisce Eireann Pre-Connection Enquiry is attached to planning reg. ref. no. 2360285. It is further noted that the application is accompanied by a Development Impact Report dated 30/06/2023 which includes a Section in relation to Infrastructure capacity such as water/ wastewater and surface water disposal. Point no. 8 of the Request for Further Information issued on 22/08/2023 relates to a Confirmation of Feasibility (COF) from Uisce Eireann. In the absence of any definitive information to the contrary, I am satisfied that the lands meet the criteria for inclusion on the map as

per the provisions of Section 653B b) of the Act in terms of foul sewer drainage and water supply.

- 7.7. Similarly, I am satisfied that it is reasonable to conclude that the site which is the subject lands meet the criteria for inclusion on the map in terms of footpaths and public lighting, as per the provisions of Section 653B b) of the Act.
- 7.8. The subject lands are zoned 'R1 - New Residential' (Residential Phase 1 and Residential Phase 2). The current application, reg. ref. no. 2360285, is proposing residential development on both Residential Phase 1 and Residential Phase 2 lands.
- 7.9. Having regard to the Guidance provided in Section 2.11.2 of the Plan, as quoted above in Section 2.4 of this Report, and following the principles of sequential orderly development, I am satisfied that it is reasonable to consider that the R1 - New Residential Phase 2 element of the overall site cannot be reasonably developed until such time as the Phase 1 lands on the same holding are either developed or committed to development.
- 7.10. It is my opinion therefore that the R1 - New Residential Phase 2 elements of the subject landholding should be excluded from scope and that the R1 - New Residential Phase 1 lands be included on the map, as per the provisions of Section 653B a) of the Act.

## 8.0 Conclusion

- 8.1. The eastern portion of the site which is the subject of this appeal and is zoned 'R1 New Residential (Residential Phase 2)' satisfies the criterion for exclusion from the map set out in Section 653B(c) of the Taxes Consolidation Act 1997, as amended.
- 8.2. The western portion of the site which is the subject of this appeal and is zoned 'R1 New Residential (Residential Phase 1)' satisfies 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 set aside the determination of the Local Authority in respect of the parts of the lands which are zoned 'R1 New Residential' (Residential Phase 2) and that this part of the Land Parcel ID WDLA00028869 and the entirety of Land Parcel ID WDLA00028912 be removed from the map.
- 9.2. I recommend that the Board confirms the determination of the Local Authority in respect of the parts of the lands which are zoned 'R1 New Residential' (Residential Phase 1) and that this part of the Land Parcel ID (s) WDLA00028957 and WDLA00028869 be included on the map.

## 10.0 Reasons and Considerations

- 10.1. The portion lands identified as WFD-C15-40 (Land Parcel IDs WDLA00028869 and the entirety of Land Parcel ID WDLA00028912) which are zoned 'R1 New Residential' (Residential Phase 2) do not fall within the scope of Section 653B c) v) of the Act and should therefore be excluded from the map.
- 10.2. The remainder of the lands identified as WFD-C15-40 (Land Parcel IDs WDLA00028957 and WDLA00028869) which are zoned 'R1 New Residential' (Residential Phase 1) meet the qualifying criteria for inclusion on the map as set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and should therefore be included on the map.
- 10.3. 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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Frank O'Donnell

Planning Inspector

14<sup>th</sup> September 2023