



An
Bord
Pleanála

Inspector's Report

ABP-316596-23

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 Billberry, Waterford City.
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-33
Appellant(s)	Invisible Structures Limited
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the south-west bank of the River Suir c. 790 metres to the north-west of the edge of the centre of Waterford City. The site was formerly in industrial use and contained the Waterford Stanley Factory. The site previously included derelict factory units, offices and car parking. The site has since been cleared of all aforementioned structures.
- 1.2. The site has c. 545 metres of frontage onto the adjacent public road to the southwest and c. 495 metres of frontage onto the River Suir to the north east. The site has an estimated area of 5.05 hectares. The site frontage along the public road is defined by a recently installed footpath and street lighting.

2.0 Zoning and other provisions

- 2.1. The site which is the subject of this appeal is zoned 'RE Regeneration' in the Waterford City and County Development Plan 2022 to 2028. The relevant zoning objective is to *'Provide for enterprise and/or residential led regeneration.'*
- 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/ Principle Private Residence and a Residential scheme are identified uses which are 'Permitted in Principle' on lands zoned RE Regeneration.
- 2.3. The stated vision for this site (Former Waterford Stanley Site, Bilberry) is as follows:

'Development on this key strategic brownfield site should provide strong architectural design as a key landmark or gateway to Waterford City; Any development in this site should maximise its river location and facilitate the development of the greenway/ walkway along the riverside; Future developments shall comprise a high quality design, fine grained active frontage blocks providing a strong built edge; Any development should be mixed use high density with emphasis on residential uses with ancillary commercial and tourism uses; Any development should incorporate natural assets (river side location etc.) include potential open space and provide green infrastructure links. This site has potential to accommodate taller building(s) and has a potential yield of c. 300 units.'

2.4. The lands are the subject of Transport Objective no. 5 which is summarised as follows:

- Transport Objectives: 5
- Class: Bilberry
- Type: Proposed Riverside Walk
- Development Plan: WCCC Development Plan, 2022 – 2028.

2.5. Parts of the riverside frontage of the site are located within Flood Zones A and B.

3.0 Planning History

3.1. Planning History on the subject site

3.2. 08500138 (Appeal Ref. no. PL 31.232507): W.D. Bolster & Son Ltd. Permission for a mixed-use residential/retail/office/hotel development including 395 no. apartments and all associated site works. Split Decision issued on 17/09/2010: Permission was Granted for Blocks 1 to 8 and Refused for Blocks 9, 10 & 11 for the following reasons:

1. *Having regard to the scale, massing and height of the Njord Tower Bilberry 1 and the Hotel Tower Bilberry 2 and notwithstanding the revised drawings submitted to the Board, it is considered that these elements of the development together with the associated Auditorium building Bilberry 3 constitute an excessive scale of development on the site, resulting in over-development and over-intensification of use on the site. These elements of the proposed development would contrast to an excessive degree with the pattern of development in the surrounding area and would be visually obtrusive and overbearing. The proposed development would, therefore, seriously injure the amenities of the area, would dominate and devalue property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the scale, massing, height, layout and topography of Bilberry 1, 2 and 3 and notwithstanding the revised submission submitted to the Board and to the submissions made in connection with the planning application and the appeal, including the environmental impact statement and associated documentation and the revised details submitted to the Board, it is considered*

that the proposed development would not provide for a high quality environment for future occupants, having regard to considerations of microclimate and availability of daylight and penetration of sunlight. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 3.3. 98500024: Waterford Stanley Ltd. Permission for Installation of dry bag filtration system. Permission was GRANTED on 13/05/1998 subject to 1 no. condition.
- 3.4. 00509528: Waterford Stanley Ltd. Permission for a warehouse. Permission was GRANTED on 04/09/1995.
- 3.5. 00507486: R. and W. Marine Limited. Permission for extension building to workshop and stores. DECISION due on 12/07/1989. No DECISION indicated on the online iPlan planning register.
- 3.6. 00503666: Waterford Ironfounders. Provision of two wet spark machines. UNCONDITIONAL GRANT. Decision date was 29/07/1977.
- 3.7. 00502078: William O' Hanlon. Permission for the construction of a quay. DECISION was due on 26/03/1972. No DECISION indicated on the online iPlan planning register.
- 3.8. 00502042: Waterford Ironfounders Ltd. Permission for a New Foundry Plant. DECISION was due on 24/12/1971. No DECISION indicated on the online iPlan planning register.
- 3.9. 00501724: Waterford Ironfounders. Permission for an Office Block. Permission was GRANTED on 06/02/1970.
- 3.10. 00501289: Waterford Ironfounders Ltd. Permission for a Boiler House. Permission was GRANTED on 09/12/1966.
- 3.11. 00501001: Waterford Ironmongers Ltd. Permission for a Store. Permission was GRANTED on 22/12/1964.
- 3.12. Other relevant Planning History
- 3.13. P803/14: Waterford City Council. Permission for Waterford Greenway Cycle and Pedestrian Route.
- 3.14. P802/11: Waterford City Council. Planning permission for Improvement Works.
- 3.15. Other relevant Regulations/ Permits/ Licensing

3.16. Reg. CD: P0520. IPPC License. Active License Number: P050-01.

- License Status Type: Surrendered.

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 main points of the submission are summarised below.
- 4.3. The site is contaminated. The site cannot be developed until this issue is resolved.
- 4.4. Proposals have been presented to the Local Authority for the development of the site however these have been met with resistance on the side of the Local Authority.
- 4.5. The Landowner is concerned with the economic viability of developing this site in line with the Councils vision outlined below.
- 4.6. A number of issues raised about the presence of asbestos and the conditions of the soil and water with regard to contamination. A water and soil analysis were conducted and found the presence of mercury on the site. This analysis was conducted in 2007 and levels of mercury currently on the site are unknown. The presence of Polycyclic Aromatic Hydrocarbons (PAH's) were also found to be present in the soil analysis.
- 4.7. The Council has also purchased a parcel of land in order to facilitate the extension of the greenway into Waterford City. The extension of the Greenway can be considered 'social, community or governmental infrastructure'. The submitter refers to Appendix C which includes 1 no. Proposed Land Acquisition Map with lands along the site roadside frontage hatched and outlined in red. The extent of such lands is indicated to measure 1,492 sqm from folio WD4040L.
- 4.8. The Appellant quotes Section 653B of the Act and has underlined 'social, community or governmental infrastructure'.
- 4.9. A proposal for bus parking, restaurant and greenway café was not supported by the Local Authority. It is stated that the Local Authority stated that they would not support regular density terraced housing on the site and that they were looking for high density apartments to be proposed.

- 4.10. A feasibility study was conducted and found the site can accommodate upwards of 1,000 apartments. This feasibility study also found that there was not sufficient external infrastructure in place to accommodate such a development. The landowner is waiting for the Council to provide this infrastructure and service hook-ups.
- 4.11. Due to the former use of this site, the presence of potentially hazardous substances, and the lack of infrastructure, the Appellant requested that the site be excluded from the draft and supplemental maps and be reviewed after the final map has been published, in the review commencing 1st February 2025. By granting this request the Council will be giving the landowner adequate time to investigate this issue. This review period will also give the landowner time to assess the economic viability of developing the site in the coming years.

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 a mix of uses where residential development where is permitted in 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 lands are unoccupied and considered vacant or idle.
- 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:

- There are many concerns about contaminants on the site which will need to be determined before the site is even considered to be developable (Please refer to the attached letter from Frank Fox & Associates). There is no assessment by the Council of the appellants original submission regarding contamination, as required under Section 653E(1)(b)(i) of the Act in advance of issuing its determination.
- The site requires significant infrastructure in order to develop the high-density apartments that the Council is looking for.
- The site cannot be serviced until construction on the greenway concludes.

7.0 Assessment

7.1. The comments raised in the appeal are noted.

7.2. Section 3.1.2 (Exclusions from the Map) of the Residential Zoned Land Tax, Guidelines for Planning Authorities, 2022, includes recommendations in relation to Contamination. There is no indication in the appeal submission that the site is an EPA Licensed Site under Section 22 of the Waste Management Acts.

7.3. The initial submission includes in Appendix B, Laboratory Test Results for the site dated 02/08/2008. The Appeal submission includes a letter from Consulting Engineers in respect of the lands. The contents of this said letter are noted.

7.4. The issue of site contamination is not raised as part of the Local Authority appraisal.

7.5. The site has been cleared and is free from any structures.

7.6. The site is the subject of a now surrendered IPC License, see IPC Active License Ref. No: P05020-01. The EPA issued a Decision on an Application to Surrender Integrated Pollution Prevention & Control License (IPPC) on 15/12/2020. The said Decision letter states that *'the Agency is satisfied that licensable activities have ceased at the*

installation and that the condition of the installation is not causing or likely to cause environmental pollution and the site of the activity is in a satisfactory state.'

- 7.7. The issue of Site Decontamination is raised in Section 11.8 of the An Bord Pleanála Inspectors Report in relation to appeal ref. no. PL 31.232507 dated 15/06/2009. Reference is made to an Environmental Assessment Report which accompanied the application and was prepared in January 2007 which is stated to conclude that generally there are no contamination issues with the native materials under the current site conditions.
- 7.8. Section 3.1.2 of the Residential Zoned Land Tax Guidelines for Planning Authorities, 2022, includes recommendations in relation to Contamination. Having regard to this guidance and in the absence of any definitive up to date information to the contrary, I am satisfied that the subject lands do not qualify as contaminated lands, within the meaning of the Section 653B c) of the Act.
- 7.9. The vacant and idle status of the lands is not disputed.
- 7.10. Uisce Eireann confirm that a watermain exists on the public road in close proximity to the site. Available GIS data indicates that the watermain is accessible (c. 10m distance away) via the Bilberry road adjoining the site.
- 7.11. 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.
- 7.12. Uisce Eireann (UE) 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 c. 40m onto the Bilberry road adjoining the site.
- 7.13. 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.
- 7.14. There is existing surface water infrastructure on the public road fronting the subject site.

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-C15-33 (RZLT Map Parcel ID: WDLA000205), 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

7th September 2023