



An
Bord
Pleanála

Inspector's Report

ABP-316599-23

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
Location	Lands at Oaklands, Ballinakill, Waterford City.
Local Authority	Waterford City & County Council
Planning Authority Reg. Ref.	WFD-C15-35.
Appellant(s)	Seamus Walsh of Invisible Structures Ltd, Waterford Castle Hotel and Golf Club Limited.
Inspector	Daire McDevitt

1.0 Site Location and Description

The lands identified as WFD-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) are located at Oaklands in Ballynakill, Waterford city in a predominantly residential area.

There are concurrent RZLT appeals under ABP 316551-23 by Seamus Walsh of Kilkenny Walsh Limited, Waterford Castle Hotel and Golf Club Limited for lands at the Ard Ri Site, Ferrybank 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 RS 'to provide for residential development and protect and improve residential amenity'.

Residential Phasing stated not be applicable.

3.0 Planning History

There is extensive planning history associated with the wider tract of lands from which the lands originally formed part of.

These include inter alia:

PA Ref. 04500158 2004 grant of permission on appeal to the Ellickson Partnership for the construction of a residential development, comprising 117 No. units with childcare facilities on a site measuring 3.50 hectares (8.65 acres). The development comprises 15 No. dwelling houses. 102 No. apartments in 11 No. blocks including conversion of existing 2-storey to provide 4 No. 1 bed units. Childcare facility with gross floor area of 215 sq.m. at ground floor of block H with outdoor play space measuring 242.10 sq.m. access via new site entrance from Dunmore Road including the demolition of portion of the existing boundary and realignment of the new constructed wall and railing forming the new entrance; Demolition of the existing two-storey garage structure to rear of existing dwelling; 151 No. car parking spaces; 102 No. bicycle spaces; hard & soft landscaping; boundary walls and fences and all associated site development works

PA Ref. 07500241 refers to a 2007 grant of permission to Ellickson Partnership for a residential development of 38 no. dwellings as follows: 17 No. 2 storey detached; 2 no. 2 storey semi-detached; 2 no. 1.5 storey detached; 1 no. 1.75 storey detached; 11 no. 2.5 storey terraced; 4 no. 2.5 storey end of terrace, 1 no. 1.5 storey detached with integrated garage. This house, House type K, to be served by a new private vehicular entrance from Kingswood Estate: 1 No. new pedestrian entrance and all associated site development works.

PA Ref. 13500090 an application by Ellickson Partnership that was withdrawn for a ten year planning permission for 32 no. detached two-storey dwelling houses consisting of 15 no. 5-bed dwellings, 16 no. 4-bed dwellings and 1 no. 3-bed dwellings, together with all associated site development works.

PA Ref. 13500082 refers to an EoD of 07/241.

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 since 2020 and as such cannot be developed until this is settled.~~

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 residential development 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.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The site is the subject of ongoing legal dispute that prevents the development of the site.
- Consent to develop cannot be obtained from the legal owner until the legal proceeding have concluded.

- The site cannot be fully serviced until the legal status of the lands has been resolved.
- It is submitted that if there was no legal dispute the appellant would be able to fully service the site.
- Appellant cannot service the site due to lack of vehicular access as a result of the legal proceedings.
- There is no assessment by the Council of the appellant's original submission as required under section 653E(1)(b)(i) of the Act in advance of issuing the Determination.

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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) are the subject on an ongoing legal dispute regarding ownership.

With regard to the issue of ownership raised by the appellant, 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.

With regard to the Council's failure to assess the appellant's original submission. 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 considering 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 lands are zoned Residential and are considered within scope of section 653B(a)(i).

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 form 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) are located on lands zoned residential 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) are zoned residential, 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-C15-35 (Parcel ID WDLA0001801, WDLA0005388, WDLA00019424, WDLA00023118, WDLA00021287, WDLA00028740) 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.

Dáire McDevitt

Senior Planning Inspector

4th September 2023