



An
Bord
Pleanála

Inspector's Report

ABP-316643-23

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 Kilrush, Dungarvan, Co. Waterford
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-48
Appellant(s)	Brendan Sheridan
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the northern side of the N25 National Secondary Road, c. 800 metres to the north-west of the edge of the centre of Dungarvan. The site has a triangular shape and has frontage onto the N25 to the south and the R672 Regional Road to the north. The site which relates to 4 no. land parcels (WDLA00028854, WDLA00028959, WDLA00028835 & WDLA00028868) has an estimated combined area of 4.52 hectares. There is an existing high voltage overhead powerline which traverses the southern portion of the subject site in a general east to west direction. In addition, there is an existing lower voltage overhead powerline which runs along the western site boundary.
- 1.2. 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. 316654-23: Donal & Karen Dempsey. Lands located c. 172 metres to the north of the subject site.
 - Appeal Ref. No. 316667-23: Colin Quarry. Lands located c. 137 metres to the north-west 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 1. 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. 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 subject site is identified as Site 4 (Kilrush), see Table 5A: Dungarvan/ Ballinroad Phase 1 Site Specific Infrastructure Assessment.

The site (Site 4) scores 1¹ 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 Growth², where Public Transport³ is available and where the development of the lands will lead to a Coordinated Approach⁴ to development.

3.0 Planning History

3.1. Planning History

- 3.2. 90510039: John Foley. Permission for the erection of an advertising sign. Permission was GRANTED on 3/12/1990.
- 3.3. 82510036: Electricity Supply Board. Permission for 300 kV overhead line. Permission was GRANTED on 05/11/1982.
- 3.4. 73510024: Electricity Supply Board. Permission for alteration in route of existing 38kV Distribution Line. Permission was GRANTED on 23/07/1973.

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 Appellant considers that the lands do not meet the criteria as there is no service in this area for surface water.

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

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 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.

³ 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.

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

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:

- The contents of the previous submission lodged with the Local Authority are reiterated by the Appellant.
- The Appellant refers to a Consulting Engineering Report and supporting map which is attached to the Appeal and is dated 25/04/2023.
- Reference is made in the Report to Section B of the land. This area is stated in the Report to be railed off by the County Council and currently accommodates the surface water from the road and lands to the west of the plot. The said lands are stated to have been in use by the Council as a surface water soakaway, by means of surface water flowing into an open channel and seeping through fractured limestone. (Reference is made to Photo no. 1).
- It is stated that there is no surface water drain fronting or serving this site and that this site is the surface water soakaway for the locality. The Report concludes that to meet the criteria of Section 653B of the Finance Act 2021, the

lands should be fully serviced by the Local Authority. It is further concluded in the Report that the lands cannot be considered to be fully serviced by the Local Authority if they are currently using said lands to dispose of public surface water.

- The Appellant submits that the determination made by the Council in this instance is untenable in that the Council is effectively adjudicating on its own planning process.
- The Council has failed to furnish the information and documentation received from Consultees, establishing the acceptability and availability of service infrastructure, alluded to in its Evaluation Report dated 27th of March 2023, on which the determination was made, thereby denying Appellant and his advisers an opportunity to comment upon such information and documentation.
- The Appellant submits that the Roads Authority, while relied upon by the council as a Consultee, is not independent of the deciding Authority which made the determination against which this Appeal is lodged.
- Contrary to the Council's determination that the lands have access to foul and surface-water sewers, there are no facilities for disposal of surface water and such facilities are in fact out of scope having regard to the fact that the Council currently and for many years has used a portion of the Appellant's lands for the purposes of dispersing its surface water by means of a slugaire, fenced off by the Council in the manner shown on the annexed photographs of same on the Appellant's lands. This fact was the basis of the Appellant's Submission dated 28th December, 2022 to the Council.
- The lands in question are part of an active farm currently in use for farming purposes by Appellant and form an integral part of his farming enterprise.
- The Appellant fails to understand how the determination was made as the existence of the slugaire is well-known to the Council. Contrary to what is stated in the determination no cognisance whatever could have been taken of the details outlined in the submission dated 28th December 2022 to the Council or indeed the situation on the ground in reaching the determination. It is inconceivable that the determining Authority (the Council), Uisce Eireann or the

Roads Authority are unaware that there is no surface water drain servicing this property and locality, in particular, in view of the Council's obligation, pursuant to the guidelines for Planning Authorities (June 2022) in carrying-out mapping of in-scope lands to avail of data available to them from the relevant stakeholders such as Irish Water as well as their own data.

- This entire process lacks openness and transparency, is oppressive and irregular in that the determining authority, the Council, is relying upon information procured from statutory providers and Consultees that are sub-groups of the said Council, such as its Planning Department and the Roads Authority and does not provide the landowner with any of the data available to them from the relevant stakeholders such as Irish Water etc Uisce Eireann is statutorily connected to the council and utilises facilities and functions of the council. In so far as our client is concerned a clear lack of impartiality exists in the determination process, having regard to the Council's nexus to its Consultees.
- It is submitted that the Councils' matrix has been incorrectly completed and that the lands in question do not have the service capacity determined by the Council and as the lands are not fully serviced same should therefore be excluded from the Council's final maps identifying land considered to be in scope and the Appellant request that the Council's determination herein be set-aside.

7.0 **Assessment**

- 7.1. The comments raised in the appeal are noted.
- 7.2. As per the Determination of the Local Authority and the associated RZLT Checklist/ Matrix, it is stated that the site is in scope under Step 2, Section 653 B b), Surface Water Drainage. The Appellants comments in relation to surface water/ treatment disposal are noted.
- 7.3. As per the provisions of Section 653 B c) of the Act, the subject lands, including the area of the site in use for the purposes of surface water disposal, identified as Site B in the Appeal submission, are not, in my opinion, affected, in terms of their physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

- 7.4. The use of the lands/ or part thereof, for the purposes of the disposal of public surface water is not expressly listed as a use under Section 653 B c) iii) which would warrant exclusion from the map. It is accepted however that Section 653 B c) iii) V) refers to water and wastewater infrastructure. Site B, as identified in the Appeal submission, should therefore be excluded from the Map.
- 7.5. There is existing surface water infrastructure along the southern site boundary onto the N52 National Secondary Road. There is nothing to suggest that subject lands cannot be suitably serviced in terms of surface water treatment and/ or disposal.
- 7.6. 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 road (R672) adjoining the land parcel.
- 7.7. 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'*).
- 7.8. 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.
- 7.9. 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 the road (R672) adjoining the land parcel.
- 7.10. 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.'*
- 7.11. 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.
- 7.12. 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 majority of the site, with the exception of Site B as identified in the Appeal submission, 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 set aside the determination of the Local Authority in respect of Site B as identified in the Appeal Submission.

9.2. I recommend that the Board confirm the determination of the Local Authority for the balance of the lands.

10.0 Reasons and Considerations

10.1. The lands identified as WFD-C15-48 (RZLT Map Parcel ID: WDLA00028854, WDLA00028959, WDLA00028835 & WDLA00028868) and excluding Site B of the Appeal Submission, 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 (with the exception of Site B as identified in the Appeal Submission) 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

25th August 2023