



An
Bord
Pleanála

Inspector's Report

ABP-316647-23

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	Lacken Road, Kilbarry, Co. Waterford
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-41
Appellant(s)	Kilbarry Developments Limited
Inspector	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 both the western and eastern sides of the Lacken Road/ LIHAF Road, c.2.7 km to the southeast of the edge of the centre of Waterford City. The subject site, which includes Land Parcel ID (s) WDLA00028840, WDLA000539 and WDLA00028839 is estimated to have a site area of c. 30 hectares.
- 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. 316553-23: MMM Ltd. Lands located to the immediate north of the subject site.
 - Appeal Ref. No. 316917-23: Frisby Homes. Lands located to the to the immediate north-west and west of the subject site on the opposite/north-west/ west side of the public road.

2.0 Zoning and other provisions

- 2.1. The subject lands are ascribed the following 3 no. zonings in the Waterford City and County Development Plan 2022 to 2028:
- 'RS – Existing Residential' - The relevant zoning objective is *'Provide for residential development and protect and improve residential amenity.'*, See Land Parcel ID: WDLA000539.
 - 'R1 – New Residential' (Residential Phase 1 and Residential Phase 2) - The relevant zoning objective is *'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'* Land Parcel ID WDLA00028839 is entirely zoned 'R1 - New Residential' (Residential Phase 1) and Land Parcel ID WDLA00028840 is predominantly zoned R1 – New Residential' (Residential Phase 2) with the balance zoned 'OS – Open Space and Recreation' – The relevant zoning objective is to *'Preserve and provide for open space and recreational amenities.'*
- 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 RS (Existing Residential) and lands zoned R1 New Residential.

- 2.3. 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.'*

2.4. 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 13 (Kilbarry (LIHAF Road South)) and Site 18 (Kilbarry (Lacken Road East), see Table 4A: Waterford City Phase 1 Site Specific Infrastructure Assessment. Sites 13 and 18 each score 1¹ in relation to Roads, Footpath, Water Supply and Wastewater. It is further indicated that both sites fall within the definition for lands qualifying as necessitating Compact Growth², where Public Transport³ is available and where a Coordinated Approach⁴ to development is required.

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

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.*

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. Relevant Planning History

- 3.2. 2360154: Martin White. Permission for alterations to a development previously permitted but not constructed – Planning Ref. 18/734, at Lacken, Kilbarry, Waterford. Permission was GRANTED on 17/07/2023 subject to 6 no. conditions.
- 3.3. 23163: Kilbarry Developments Ltd. Extension of Duration for planning reg. ref. no. 17896. EOD Granted on 01/08/2023. Expiry date on IPlan Planning Register is indicated as 14/10/2028.
- 3.4. 22260: Kilbarry Developments Limited. Permission for alterations to a development previously permitted but not constructed - Planning Ref. 18/735. Permission was GRANTED on 25/04/2023 subject to 6 no. conditions.
- 3.5. 2299: Kilbarry Developments Limited. Permission for alterations to a development previously permitted but not constructed Planning Ref. 18/734. A Request for Further Information was issued on 05/04/2022. The application was WITHDRAWN on 16/06/2022.
- 3.6. 2212: Kilbarry Developments Ltd. Permission for the construction of 58 No. dwellings (Phase 5). Permission was GRANTED on 10/11/2022 subject to 24 no. conditions.
- 3.7. 2211: Kilbarry Developments Ltd. Permission for the construction of 58 No. dwellings (Phase 6). Permission was GRANTED on 14/12/2022 subject to 24 no. conditions.
- 3.8. 211224: Kilbarry Developments Ltd. INCOMPLETE APPLICATION.
- 3.9. 211222: Kilbarry Developments Ltd. INCOMPLETE APPLICATION.
- 3.10. 211211: Newpark Properties Ltd. Permission to raise the level of existing agricultural lands using clean inert soil and stones (EU Waste Class 17 0504) in order to improve

the quality of said lands. An application for a waste disposal permit will be applied for post-planning. Permission was GRANTED on 25/10/2022 subject to 13 no. conditions.

3.11. 19370: Kilbarry Development Limited. Ten-year permission for a solar energy park on a site of approximately 3.88 hectares. Permission was Refused on 24/07/2019 for 2 no. reasons, as follows:

1. *The development site is located on lands zoned 'open space' as designated in the Waterford City Development Plan 2013 - 2019 and the purpose of this zoning is 'to preserve and provide for recreational uses, open space and amenity facilities'. The proposed development, would contravene materially a development objective of the Waterford City Development Plan 2013 – 2019, which provides for the preservation and provision of the area for recreational uses, open space and amenity facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the nature, scale and proximity of the proposed development to the neighbouring eastern residential property and the zoning objective for the site which is 'To preserve and provide for recreational uses, open space and amenity facilities', notwithstanding the proposed screen planting to the eastern site boundary it is considered that the proposed development as submitted would seriously injure the residential amenity and depreciate the value of this property and detract from the character and visual amenity of the area.*

3.12. 18735: Kilbarry Developments Limited. Permission for the construction of a residential development comprising of the following: 92 no. dwellings consisting of: 24 no. apartments in 3 no. 2 storey blocks, 46 no. 2 storey 3-bed semi-detached dwellings, 22 no. 2 storey 4-bed semi-detached dwellings. Permission was GRANTED on 29/04/2019 subject to 28 no. conditions.

3.13. 18734: Kilbarry Developments Limited. Permission for the construction of a residential development comprising of the following: 90 no. dwellings consisting of; 24 no. apartments in 3 no. 2 storey blocks, 46 no. 2 storey 3-bed semi-detached dwellings; 20 no. 2 storey 4-bed semi-detached dwellings. Permission was GRANTED on 29/04/2019 subject to 27 no. conditions.

- 3.14. 17897: Kilbarry Developments Ltd. Permission for site development works for 68 no. serviced sites. Application was WITHDRAWN on 20/02/2018.
- 3.15. 17896: Kilbarry Developments Ltd. Permission for the construction of a 99 unit housing and apartment development. Permission was GRANTED on 15/10/2018 subject to 25 no. conditions.
- 3.16. 17895: Kilbarry Developments Ltd. Permission for the construction of 92 No. 2 storey houses Permission was GRANTED on 15/10/2018 subject to 24 no. conditions.

4.0 Submission to the Local Authority

- 4.1. The Appellants 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 land in the Applicants' ownership is currently being developed by the applicant on a phased basis with the benefit of planning permission. It is expected the permitted development will be implemented within the lifetime of the permissions (with extensions of duration of permission if necessary).
- 4.5. As the land is zoned as suitable for residential and other uses and is not layout 'vacant or idle' as it is being actively developed, it is considered it does not fall within the scope of the tax.
- 4.6. 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. 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 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 Property forms part of a wider 13ha landholding. The remaining land is to the east of and is not for residential or mixed-use development.
- It is expected the permitted development will be implemented within the lifetime of the permissions.
- The relevant permission references are 17/895 (Phase 1 of 10) and 17/896 (Phase 2 of 10) for the lands to the northwest of the junction of the LIHAF road. These lands are at an advanced stage of construction and are served by a section of the LIHAF road which the applicant has contributed to financially and took over 12 months from the grants of the original permissions to develop. This hindered progress with the housing. These lands are located to the northwest of the LIHAF Road.
- Planning application ref: 18/734 (Phase 3) and Planning application ref. 18/735 (as amended by 22/260) (Phase 4) have the benefit of planning permission and are regulated by the terms of an EIAR and a NIS. Works have not commenced and will proceed following completion of phases 1 and 2. This is provided for in the EIAR and NIS which the applicant is obliged to develop in accordance with.

- Some of the lands in the ownership of the applicant on the eastern side of the LIHAF road have the benefit of planning permission. Planning permission refs: 21/1224 and 22/12 (Phase 5 of 10) and 22/260 and 22/11 (Phase 6 of 10) refer. Both phases are also regulated by the terms of an EIAR and NIS which the applicant is obliged to develop in accordance with.
- Planning permission for housing on the lands relating to phases 7 – 10 to the south and east of phases 5 and 6 to the east of the LIHAF road has still to be sought and works have not commenced.
- Phases 5 to 10 are dependent on a pumping station being developed by the applicant which is permitted along with the housing on Phases 5 and 6.
- The Evaluation Report by Waterford City and County Council, ref: WFD-C15-41 in respect of the subject lands states that the land can be connected or is able to be connected to services. This is an inaccurate and incorrect statement.
- ‘Serviced’, as defined in the Revenue Guidelines⁵ means *‘having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed. Only when land is zoned for residential use and has access to necessary infrastructural services to allow for development to proceed that it is within the scope of the tax’*.
- The development of Phases 3 to 10 is bound by the EIAR and NIS and the EIAR and the relevant planning permissions require the phasing of development whereby later phases cannot be developed until substantial completion of earlier phases, including services. Moreover, the housing permitted on phases 5 – 10 cannot be fully serviced and completed until the pumping station permitted with phases 5 and 6 has been installed and made operational.
- It is respectfully submitted that the owner cannot be required to develop his land in a way that does not conform to strict requirements of the EIAR and NIS and

⁵ See Section 2.2 of the ‘Tax and Duty Manual (Part 22A-01-01 – Guidance on the Residential Zoned Land Tax – Part 22A-01-01’, ‘Part 22A of the Taxes Consolidation Act 1997’ and the definition in ‘Residential Zoned Land Tax – Your Questions Answered, DHLGH 2022’

the timely delivery of services. To knowingly develop in a way that is not in full compliance with the EIAR or NIS would render the works unauthorised and incapable of regularisation.

- The Board is requested to uphold this appeal and determine that the subject site should be excluded from the final RZLT map of lands to be the subject of the tax.

7.0 **Assessment**

- 7.1. The comments raised in the appeal are noted.
- 7.2. Land Parcel ID WDLA000539 is zoned 'RS - Existing Residential' and development works have commenced on this site. In my opinion this Land Parcel satisfies the provisions of Section 653B a) of the Act and should therefore remain on the map.
- 7.3. Land Parcel ID WDLA00028839 is entirely zoned 'R1 - New Residential' (Residential Phase 1) and relates to Phases 3 & 4 of the Appellants stated Phasing Plan. In my opinion this Land Parcel also satisfies the provisions of Section 653B a) of the Act and should therefore remain on the map.
- 7.4. Land Parcel ID WDLA00028840 is predominantly zoned 'R1 – New Residential' (Residential Phase 2) with the balance of this Land Parcel zoned 'R1 – New Residential' (Residential Phase 1) and 'OS – Open Space and Recreation'. Planning permission has been granted under planning reg. ref. no's 2212 and 2211 and the said permissions relate to Phases 5 and 6 of the Appellants stated Phasing Plan.
- 7.5. Having regard to guidance provided in Section 2.11.2 of the Plan, as quoted above in Section 2.3 of this Report, it is my opinion that the lands zoned 'R1 – New Residential' (Residential Phase 1) of this Land Parcel ID WDLA00028840, satisfy the provisions of Section 653B a) of the Act and should therefore remain on the map. The balance of this Land Parcel ID WDLA00028840, relating to lands zoned 'OS – Open Space and Recreation' and 'R1 – New Residential' (Residential Phase 2) do not, in my opinion, satisfy the provisions of Section 653B a) of the Act and should therefore be excluded from the map.

8.0 Conclusion

- 8.1. The portions of Land Parcel ID WDLA00028840 zoned 'R1 New Residential (Residential Phase 2)' and 'OS – Open Space and Recreation' satisfy the criterion for exclusion from the map set out in Section 653B(c) of the Taxes Consolidation Act 1997, as amended.
- 8.2. The remainder of Land Parcel ID WDLA00028840 and all of Land Parcel ID (s) WDLA000539 and WDLA00028839 which are zoned 'RS - Existing Residential' and 'R1 New Residential (Residential Phase 1)' 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 in respect of Land Parcel ID (s) WDLA000539 and WDLA00028839 and that the indicated site (s) be retained on the map.
- 9.2. I recommended that the Board confirm the determination of the Local Authority in respect of Land Parcel ID WDLA00028840, with the exception of the portions of this said Land Parcel which are zoned 'R1 New Residential (Residential Phase 2)' and 'OS – Open Space and Recreation', which should be set aside and excluded from the map.

10.0 Reasons and Considerations

- 10.1. The lands identified as RZLT Map Land Parcel ID: WDLA000539 and WDLA00028839, 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. The lands identified as RZLT Map Land Parcel ID: WDLA00028840, with the exception of the portion of this said Land Parcel which are zoned 'R1 New Residential (Residential Phase 2)' and 'OS – Open Space and Recreation' 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.

- 10.3. The lands identified within RZLT Map Land Parcel ID: WDLA00028840, zoned 'R1 New Residential (Residential Phase 2)' and 'OS – Open Space and Recreation', do not meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and are therefore excluded from the map.
- 10.4. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.5. 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

14th September 2023