



An
Bord
Pleanála

Inspector's Report

ABP-316679-23

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 Cois Teampaill, Ballintemple, Newcastle West, Co. Limerick.

Local Authority

Limerick City & County Council

Planning Authority Reg. Ref.

LCC-C172-RZLT1-27.

Appellant(s)

Rathbrae Limited.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 are located at Cois Teampaill Housing development in Ballintemple , Newcastle West, Co. Limerick.

2.0 Zoning and other provisions

Newcastle West Local Area Plan 2014-2020 (extend to April 2024) is the current operative Plan.

The lands are the subject of three land use zoning objectives:

- Existing Residential
- Residential Development Area Please 1
- Residential Development Area Please 2

Existing Residential: The purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas. Some home businesses may be open to consideration provided the activity is ancillary to the use of the house as the primary residence of the owner. The conversion of houses for the sole use for a business/offices will not be permitted. Refer to section 5.5 of this Plan.

New Residential Development Area: This zoning provides for new residential development and other services associated with residential development. While housing is the primary use in this zone, recreation, education, crèche/playschool, sheltered housing and small corner shops are also envisaged, subject to the preservation of residential amenity, traffic considerations and compliance with Section 5.5 in Chapter 5 of this Plan.

Residential Serviced Sites: Residential serviced sites offer an alternative to individuals wishing to build and design their own houses in an urban setting with established services rather than the open countryside. Suitable edge-of-town lands have been identified within the LAP boundary that provide the opportunity to cater for these lower densities, so as to provide an alternative to sporadic development in the rural areas. Proposals for the development of serviced sites shall comply with objective H3 in

Chapter 4 of this plan. Permeability with existing residential areas, facilities, and adjacent lands zoned for future development, pedestrian and cyclist mobility will be an important consideration of any proposal.

Residential Development Area Please 2

Objective H2 Residential density, design, mix and phasing sets out relevant requirements. This includes "g) *Ensure development of residential land in Phase 2 can only proceed when at least 50% of all development in New Residential zoned areas Phase 1 is completed. This will be monitored throughout the plan period.*"

The Draft Newcastle West Local Area Plan 2023 was on display from the 6th May to 19th June 2023

3.0 Planning History

PA Ref. 18/109 refers to an application that was withdrawn for 63 dwellings.

4.0 Submission to the Local Authority

The appellant made a submission to the local authority seeking to have his land removed from the draft map on a number of grounds which include inter alia that the lands are zoned Phase 2 (refers to planning history on site). The Newcastle West WWTP is at capacity. The LA have expressed interests in a portion of the lands zoned Education and Community for a graveyard extension.

5.0 Determination by the Local Authority

The local authority determined that:

1. The land in question is included in a local area plan and is zoned for residential development.
2. The land is serviced, or is reasonable to consider may have access to services. Serviced 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 a services capacity available sufficient to enable housing to be developed.

3. The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains.
4. As stated in the Guidelines, matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance or personal circumstances are not matters to be taken into account during consideration of submissions.

NOTE: Having reviewed your submission, the planning authority, following receipt of clarification from the Department of Housing, Local Government and Heritage, note that serviced land, irrespective of phasing should be 'in scope' on the RZLT Map. The Department has indicated that the tax may expedite the development of Phase 1 lands whether in the same ownership or not.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- Lands apart from an irregular shaped and landlocked section are zoned Phase 2 and as such are not available for development, as demonstrated by the planning history associated with the lands.
- 50% of phase 1 lands in Newcastle West have not been developed as such phase 2 lands are not available for development.
- No capacity in Newcastle West WWTP.
- Reference to engagement with LCCC regarding land transaction for lands zoned residential and community
- Reference to the requirement for a test case judicial review.

7.0 Assessment

The comments raised in the appeal are noted. The local authority outlined in its report why it has determined that the site is in scope for inclusion on the RZLT maps.

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 portion of the appeal lands zoned 'Existing Residential' and 'Residential Development Area Please 1' are considered within scope of section 653B(a).

While I note the portion of lands zoned 'Residential Development Area Please 2' is zoned residential, it is the subject of phasing requirements. Objective H2 of the current Local Area Plan states "*g) Ensure development of residential land in Phase 2 can only proceed when at least 50% of all development in New Residential Zoned Areas Phase 1 is completed. This will be monitored throughout the plan period.*" This restriction results in the land not being available for residential development that is not subject to significant restrictions relating to the sequential development of lands in Newcastle West and the requirements for at least 50% of all development in New Residential Zoned Areas Phase 1 being completed. Based on the information available I have no evidence that this is the case. The local authority considered the lands in scope on the basis of advice received from the Department of Housing, Local Government and Heritage. The provisions of the current Newcastle West Local Area Plan would not allow for residential development on the date of the determination, so therefore the site is not considered to have been zoned residential at that time. And as such should be excluded from the Final RZLT Map on this basis. I am satisfied that the portion of lands zoned 'Residential Development Area Please 2' are not in scope of 653B(a) and therefore the appeal on these grounds should be upheld.

I have set out below my assessment with regard to the portion of lands zoned 'Existing Residential' and 'Residential Development Area Please 1' identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 and compliance with section 653B(b).

The appellant has submitted that the lands should be excluded as the Newcastle West WWTP is at capacity. Correspondence on file from Uisce Eireann refers to section 3.2.3 of the RZLT Guidelines which states “*where capacity existing in wastewater treatment plants or water supply plants for a settlement, all lands which are zoned and connected or able to be connected to the relevant network should be considered n=in scope until such time as the capacity is confirmed to have been utilised.*”

The UE Wastewater Treatment Capacity Register published June 2023 has assigned a green status (spare capacity) to Newcastle West with WWTP planned/underway.

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. Correspondence on file from Uisce Eireann confirms that a water main and public sewer exists on the public road in close proximity to the site and that the watermain and public sewer are accessible c.20m away via the Cois Teampaill Estate adjoining the land parcel. Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authority 2022 clear sets out that ‘A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. For the purposes of falling within the scope of RZLT the criteria is whether it to ‘is reasonable to consider’.

The provision of infrastructure to the subject lands are considered to be in the control of Limerick 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. The portion of lands zoned Existing Residential’ and ‘Residential Development Area Please 1’ can be served in principle by the existing road network that is in place and are zoned residential. In my opinion 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, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The portion of land zoned 'New Residential Zoned Areas Phase 2' located at lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 were not available for residential development at the time of Determination. The land does not comply with the criteria set out under section 653B(a) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the as there are not within scope of section 563B(a) of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021). I recommend that the Board set aside the Determination of the Local authority and allow the appeal relating to this portion of the lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 and remove it from the final map.

The portion of land zoned 'Existing Residential' and 'New Residential Zoned Areas Phase 1' lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 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 identified as LKLA00012147 and LKLA00012196 under LCC-C172-RZLT-27 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 LKLA00012147 and LKLA00012196 under LCC-C172-RZLT-27 the 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 portion of land zoned 'New Residential Zoned Areas Phase 2' located at lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27 were not available for residential development at the time of Determination. The land does not comply with the criteria set out under section 653B(a) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the as there are not within scope of section 563B(a) of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021). I recommend that the Board set aside the Determination of the Local authority and allow the appeal relating to this portion of the lands identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT1-27.

The portion of land zoned 'Existing Residential' and 'New Residential Zoned Areas Phase 1' identified as Land Parcel LKLA00012147 and LKLA00012196 under LCC-C172-RZLT-27 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 the lands identified as LKLA00012147 and LKLA00012196 under LCC-C172-RZLT-27 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 LKLA00012147 and LKLA00012196 under LCC-C172-RZLT-27 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,
2nd August 2023