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Bord  
Pleanála

## Inspector's Report

### ABP-316682-23

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#### 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 Cleaboy Road, Waterford City.

#### Local Authority

Waterford City & County Council

#### Planning Authority Reg. Ref.

WFD-C15-22

#### Appellant(s)

Magna Capital Investments Ltd.

#### Inspector

Daire McDevitt

## **1.0 Site Location and Description**

The lands identified as WFD-C15-22 (Parcel ID WDLA000185) refer to lands at Cleaboy Road in Waterford. The lands are at present occupied by warehouse/industrial building.

The Notice of Determination noted the submitter as Noel Frisby Jr. The Determination was issued to Frisby Homes. The appeal is lodged by Frisby Homes on behalf of Magna Capital Investments Ltd.

There are concurrent RZLT appeals by Privatcorp Ltd (same address as Frisby Homes) under ABP Ref. 316824-23 for lands at Mountneil, Carrickpherish, Waterford. And by Deltacrestor Limited (C/O Frisby Homes) under ABP 316960-23 for lands at Kilcohan, Old Tramore Road, Waterford. Pineview Construction Company Limited under ABP 316672-23 for land at Park Road, Waterford. Ryalkea Limited under ABP 316668-23 for lands at Kilbarry and Frisby Homes under ABP 316917-23 for lands at Kilbarry.

## **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 RE Regeneration with a stated objective 'to provide for enterprise and/or residential led regeneration'. Residential Use is permitted in principle.

Cleaboy/Keane's/Tycor Road Regeneration and Opportunity Site. Vision:  
*Development on this underutilised city centre site should provide for mixed use developments with emphasis on employment, apartments and residential city living which is compliant with zoning objective (Potential Housing Yield); The development should address the extensive street frontage along Cleaboy Road, Keane's Road and Tycor Road. Future development shall comprise a high quality design, fine grained active frontage blocks providing a strong built edge; A high quality public realm will be required in any development including pocket parks; Pedestrian and cycle links between Cleaboy and Tycor Road should be included in the overall design of this site; Adjoining private amenity spaces of neighbouring residential properties should be protected through the design and layout of any proposal.*

### **3.0 Planning History**

The appellant has referred in the documentation to a 1979 permission under 00/504085 for an industrial building.

00508086 refers to a 1991 application by Nordex Manufacturing Limited for offices and showroom. No decision.

00504085 refers to a 1979 permission to ACEC for a factory extension.

005011737 refers to a 1969 permission to Tycor ACEC (Ireland) Ltd for store.

00501240 refers to a 1966 permission to ACEC for addition.

### **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 c.80% of the site is occupied by a warehouse paying commercial rates and surrounding land is used to support the functioning of the building.

### **5.0 Determination by 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 mix of uses where residential development is permitted in principle.
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.
4. The lands are occupied by an unauthorised trade/profession which is liable to payment of rates, the operation of which is not required or integral to a trade/profession being carried out on adjacent land.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Grounds of appeal are summarised as follows:

- The use of the building is authorised and in line with the original planning permitted/uses of the building for a factory/industrial.

- It is submitted that there was inadequate evidence in WCCC response to demonstrate why the use of the building was unauthorised. The unit has been occupied for years and pays rates.
- Prior to 1992 building was used as an industrial building and warehouse as part of ACEC (Transformer manufacturing), then by ABB (Transformer Manufacturing) up to 2010 and then by Eurorbase Logistics until 2017 when Magna Capital Investments Ltd purchased the property.
- The onsite industrial unit takes up c.80% of the site and is currently occupied by Stafford Bonded and used in an industrial capacity within the maturation process of Irish Whiskey. Letter from tenants included with the appeal documentation. Photos included.
- It is submitted that the that the lands should be excluded as consist of an authorised use which is required for or integral to the operation profession being carried out on or adjacent to the land.

## **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.

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 RE Regeneration where residential use is permitted in principle are considered within scope of section 653B(a)(ii).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. The relevant land in this instance includes building/areas of hard standing. Page 12 of the Guidelines on Residential Zoned Land Tax – Guidelines for Planning Authorities June 2022 set out that ‘vacant or idle land’ means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

The appellant has submitted that the lands are not vacant/idle as there is an authorised use operating from the lands which is liable to commercial rates.

The local authority in their assessment (checklist) determined the land to be in scope and noted reason no. 4 *‘the lands are occupied by an unauthorised trade/profession which is liable to payment of rates. The operation of which I not required or integral to a trade/profession being carried out on adjacent lands’*. I note no other comment/assessment/justifications provided in the assessment.

The purpose of this report is to assess compliance with section 365B criteria as set out in the Determination made by the local authority. Based on the information on file the lands are considered vacant/idle as per the definition of vacant/idle set out in the legislation as the use of the building for the maturation process of Irish Whiskey does not clarify the extent of product stored and if this constitutes a material change of use. Based on the information on file I have no evidence that the current use is authorised. I note that Stafford Bonded (Letter submitted regarding rental of the unit which is the subject of this appeal) have addresses at Sinnottstown Lane, Wexford and a maturation unit at Lockhead Avenue, Airport Business Park, Waterford (PA Ref.20338 refers to a 2020 WCCC grant of permission for change of use of 5 no. warehousing units to Maturation Unit). Therefore having regard to the submission received, the local authority assessment and Determination and the guidance set out on page 12 of the Guidelines I am of the view that the lands fall within the scope of vacant or idle asset out in the legislation.

The grounds of appeal have not raised matters under section 653B that would warrant the exclusion of the lands from the final RZLT map. Having regard to the foregoing I consider that the lands identified as WFD-C15-22 (Parcel ID WDLA000185) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

The provision of infrastructure to the subject lands are considered to be in the control of Waterford City and County Council and Uisce Eireann. 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-C15-22 (Parcel ID WDLA000185) 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 this portion of the lands from the final map.

## **8.0 Conclusion & Recommendation**

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-C15-22 (Parcel ID WDLA000185) are located on lands where residential use is a permissible use in principle, 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-C15-22 (Parcel ID WDLA000185) 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 WFD-C15-22 (Parcel ID WDLA000185) 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-C15-22 (Parcel ID WDLA000185) are located on lands zoned RE where residential use is permitted in principle, 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-C15-22 (Parcel ID WDLA000185) 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.*

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Dáire McDevitt

Senior Planning Inspector

30<sup>th</sup> August 2023