



An
Bord
Pleanála

Inspector's Report

ABP-316696-23

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 Laherdane, Ballyvolane & Ballincolly, Cork.

Local Authority

Cork City Council.

Planning Authority Reg. Ref.

CRK-RZLT-22.

Appellant(s)

Waterrock View Ltd.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as CRK-RZLT-22 (Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148, CCLA00027438 and CCLA00029836) refer to lands at Laherdane, Ballyvolane & Ballincolly in Cork.

The appellant has identified Parcel A which include Parcel ID CCLA00027745, CCLA00027439, CCLA00028148 and CCLA00027438. Parcel A is located adjacent to the Ballyhooley Road, separated from it by a public transport corridor. And Parcel B which includes Parcel ID CCLA 00029836 refers to part of the construction compound area and is located to the east of the landholding.

The grounds of appeal note the lands owned by Waterrock View Ltd, form part of an overall landbank in Ballyvolane owned by a series of companies in common ownership. The four companies are Waterrock View Ltd, Longview Estates Ltd, Crystal County Ltd and Ballyvolane View Ltd.

There are concurrent appeals under ABP 317011-23 by Crystal County Ltd for lands identified as CRK-RZLT-23 (Land Parcel ID CCLA00029840) and under ABP 317014-23 by Longview Estates Limited for lands identified as CRK-RZLT-18 (Land Parcel ID CCLA00029834, CCLA00029835, CCLA00029837, CCLA00027243, CCLA00027246, CCLA00027458, CCLA00027459, CCLA00027464, CCLA00027461 and CCLA00029839) all of which relate to the overall landbank which the current appeal lands from part of.

2.0 Zoning and other provisions

The relevant plan is the Cork City Development Plan 2022-2028.

The lands are zoned ZO 02 New Residential Neighbourhood (Map 12).

Identified as Tier 2 lands in Figure 2.21 'The Growth Strategy Map'.

Section 2.51 notes ' Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan'.

Section 12.14 'Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan'.

Section 4.122 the CNDR will provide an orbital route for bus, pedestrian and cycle and some strategic and general traffic and will reduce reliance on radial routes through the city centre.

Cork MASP

Policy Objective 9(i) - Cork Northern Distributor Road delivering a multimodal orbital public transport route, accessing planned development lands, connecting to radial distributor roads and providing connectivity at its western end to join the existing N22.

Objective 9(q) - North East Orbital Road (access for residential lands and public transport infrastructure Ballyvolane).

3.0 Planning History

ABP 306325-20 refers to a 2020 grant of permission to Longview Estates Limited for a SHD application for 531 no. Houses and 222 no. apartments, creche and associated site works.

4.0 Submission to the Local Authority

A submission was made to the local authority seeking to have the overall landbank removed from the draft map, requesting that lands be excluded on the basis that inter alia inefficient services available and statutory designations applying (ie the parties have agreed a section 47 which impacts many portions of the land bank with the Council on infrastructure provision to service the lands which has only been partly progressed by public bodies).

Services are not deliverable on the relevant dates due to statutory designations and infrastructure deficiencies and lack of progress on items such as the Inner Northern Distributor Road. Premature pending IW infrastructure works and delivery of major roads, parks and public infrastructure. Permitted development under ABP 306325-20 to be delivered phased basis which reflects access/availability of services. Request Phase 1 omitted, omit Section 47 lands and Phase 6, omit newly zoned residential lands and omit Phase 6 as needed as a construction compound.

5.0 Determination by the Local Authority

The local authority determined that:

- The land is included in the Cork City Development Plan 2022-2028, in accordance with section 10(2)(a) of the Act and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- These lands satisfy section 653(B) of the act, in that it is reasonable to consider that the land 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 an with sufficient service capacity for such development.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- The lands owned by Waterrock View Ltd, form part of an overall landbank in Ballyvolane owned by a series of companies in common ownership. The four companies are Waterrock View Ltd, Longview Estates Ltd, Crystal County Ltd and Ballyvolane View Ltd.

- There is an extant permission under ABP 306325-20 for 753 residential units. The appellants have submitted that the 2020 grant of permission provides for the development to be delivered on a phased basis which includes the phased delivery of public infrastructure and services to allow for full serving. Therefore all lands are not available/accessible or serviceable at the same date.
- The grounds of appeal identify the lands as Parcel A which include Parcel ID CCLA00027745, CCLA00027439, CCLA00028148 and CCLA00027438. Parcel A is located adjacent to the Ballyhooley Road, separated from it by a Public Transport corridor. And Parcel B which includes Parcel ID CCLA 00029836 refers to part of the construction compound area and is located to the east of the landholding.
- The councils Determination refers to Parcels CCLA00027745, CCLA00027439, CCLA00028148 and CCLA00029836 which is incorrect and does not reflect what was uploaded in the portal and referred to in the initial submission which clearly identifies the lands in the ownership of Waterrock View Ltd as Parcels CCLA00027745, CCLA00027439, CCLA00028148 and CCLA00029836 but also includes land parcel ID CCLA00028148.
- The submission to CC on the draft RZLT map also challenged that date of inclusion of the lands on the RZLT by CCC, but CCC did not referenced this fact in their decision or report.
- All parcels are compromised in some manner in the short to medium term, these deficiencies in “sufficient services” include a failure of the Council to develop and advance roads and public transport proposals and a failure of IW to advance critical infrastructure on the ground to service the lands, the need for the Council to advance the provision of parks in the area to service the envisaged population increase and the presences of section 47 agreement on lands that restrict the development of the lands in question.
- Waterrock View Ltd transferred necessary lands to IW for the required pumping station construction. This should also be excluded as clearly now a ‘utility use’.

- Irish Water are building public utilities on part of Parcel ID CCLA00027745.
- Construction of pumping station had commenced and the ancillary rising main, watermain and gravity main to service land are yet to be completed or commissioned.
- The Cork Northern Distributor Road and public transport corridor (Ballyvolane Strategic Transport Corridor Scheme) to service the lands has not commenced. In the case of the current appeal, the Cork Northern Distributor Road/Inner Northern Distributor Road alignment is needed so as to design meaningful development proposals. Developments in the area considered premature pending its delivery.
- The appellants submit that as none of the works set out in the section 47 agreement for Land Parcel IDCCLA00027745, CCLA00027439, CCLA00028148 and CCLA00027438 are completed to the point that they can be considered to provide “sufficient service capacity”. The Section 47 agreement between Longview Estates Limited, Waterrock View Ltd and Cork City Council applies to workstreams to provide sufficient services to deliver the lands, all within the control of Cork City Council and include:
 - The widening and improvement of Ballyhooley Road. Partly achieved by the ‘Ballyvolane Strategic Transport Corridor Scheme’.
 - The delivery of an alignment for the North Cork Distributor/Inner Northern Distributor Road.
- An extract from the section 47 agreement between Longview Estates, Waterrock View and Cork City Council states that Waterrock View Ltd/Longview Estates covenant not to develop the lands until the route of the Cork Northern Distributor Road/Inner Northern Distributor Road (Mayfield Kilbarry Link Road being part of it) is determined and to cooperate with the City Council on design and relocation of utilities.

- There are/were not sufficient IW services to service all lands as of either the 1st January 2022 or 1st October 2022.
- Parcel B which refers to Parcel ID CCLA29836 includes part of the construction compound which the appellant submit is in effect a temporary consent for the 7 year duration of the permission. The temporary use of this parcel means it cannot be delivered for housing in the immediate life of the consent as it is needed for construction.

Overall lands should be excluded as the Section 47 agreement precludes the development of both parcel A&B (as per the appellants labelling) pending resolution of sufficient infrastructure services, the need for CPO and tendering of road upgrade works to the Ballyhooley Road, deficiency in IW infrastructure as of the date of inclusion and non provision of public parks.

7.0 Assessment

The comments raised in the appeal are noted. The local authority has submitted a copy of the Determination. There is no reports/assessment on file.

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 ZO02 New Residential Neighbourhood and considered within scope of section 653B(a)(i). The lands have an extant permission which was granted in 2020 and predates the current City Development Plan which has designated the lands Tier 2.

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".

Section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 states " where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope, subject to (iii) below". Section 4.1.1 (iii) refers to services to be considered.

The grounds of appeal submit that the lands should be exclude as their development is premature pending the provision, completion and commissions of works included in the Section 47 agreement with Cork City Council (condition no. 5 of ABP 306325-20). This-permission was granted in 2020 for a period of 7 years.

" 5. Prior to commencement of development the developer shall enter into a formal section 47 agreement, in accordance with of the Planning and Development Act 2000, as amended, in relation to:

(a) Lands that are zoned as Passive Amenity Space in the Cobh Municipal District Local Area Plan in the Ballyvolane Urban Expansion Area Lands zoned objective NE-O-04);

(b) The Mayfield Kilbarry Link Road;

(c) Lands that form part of an upgrade to the Ballyhooly Road;

(d) *A proposed distributor road to serve third party lands and later phases of the Urban Expansion Area, and*

(e) *Proposed services (foul and surface water) that are to be developed.*

This agreement shall be agreed in writing with the planning authority prior to the commencement of development on the site. Construction shall not proceed until such time as the section 47 agreement is finalised between the developer and the planning authority. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: To give certainty that the infrastructure and housing will be delivered as per the terms of the agreement in the interest of orderly development.”

The provision of infrastructure to the subject lands are considered to be in the control of Cork City 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 note correspondence from UE on ABP 317014-23 which confirms that a watermain exist on the public road in close proximity to the site via the Ballyhooley Road and that upgrades required are currently under development to cater for the entire site which requires a new water connection from a trunk main on Dublin Hill. UE confirmed that a sewer exists on the public road in close proximity to the site via the Ballyhooley Road which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requiring a PS and rising main. Page 22 of the RZLT Guidelines clearly sets out that “ where planning permissions have been granted subject to requirements for significant infrastructure to be delivered by infrastructure providers, this should not be considered ‘in scope’.

The appellants have submitted that the 2020 grant of permission provides for the development to be delivered on a phased basis which includes the phased delivery of public infrastructure and services. Therefore all lands are not available/accessible or serviceable at the same date. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is not reasonable to consider that the provision of access, footpaths, public lighting, foul, water and surface water drainage may be provided where land is in the control of the landowner or local authority. And while the lands may become available, they were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B.

The local authority in its Determination has not referenced any potential impacts the Cork Northern Distributor Road may have on the lands before the Board.

With regard to land parcel ID Parcel ID CCLA29836 and the appellants submission that the use is tantamount to a temporary consent for the use as part of a construction compound associated with the overall housing development granted permission for 7 years under ABP 306325-20. The use of part of a site as a construction compound is normal during permitted construction projects and does not result in the exclusion of these parcels for the purposes of RZLT. As such the grounds of appeal relating to this matter should be dismissed.

Having regard to the foregoing I consider that the lands identified as CRK-RZLT-22 (Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148, CCLA00027438 and CCLA00029836) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The land identified as CRK-RZLT-22 (Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148, CCLA00027438 and CCLA00029836) are not considered in scope of section 653B(b) as the land did not have access to services nor was it reasonable to consider have access to services on the relevant dates or on the date the local authority made its determination. And I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as CRK-RZLT-22 (Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148, CCLA00027438 and CCLA00029836) from the final map.

10.0 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 CRK-RZLT-22(Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148, CCLA00027438 and CCLA00029836) are not considered in scope of section 653B(b) of the Taxes Consolidation Act 1997 as amended.

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

13th September 2023