



An
Bord
Pleanála

Inspector's Report

ABP-316824-23

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 Mountneil, Carrickphierish, Waterford City.

Local Authority

Waterford City & County Council.

Planning Authority Reg. Ref.

WFD-C15-17.

Appellant(s)

Privatcorp Ltd Limited.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as WFD-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) refer to lands at Mountneill, Carrickphierish in the northwestern suburbs of Waterford city.

The submission to WCCC on the Draft Map and the grounds of appeal identify the lands as Area A (WDLA00028911) with a started are of c.10.22ha and Area B (WDLA00011292) with a started are of c.4.09ha.

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 Privatcorp Ltd.

There are concurrent RZLT appeals by Magna Capitals Investment Ltd (same address as Frisby Homes) under ABP Ref. 316682 for lands at Cleaboy Road, 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 the subject of a number of land use zonings.

Area A (land parcel ID WDLA00028911) is zoned RS Existing Residential (Residential Phase not applicable)

Area B (land parcel ID WDLA00011292) is zoned R1 New Residential (Residential Phase 2).

Located on the western boundary Area B is Specific Development Objective WCD025 Carrickpherish – New residential lands to the southeast and southwest of the junction of the Carrickpherish Road L1524 and Knockhouse Road L5507 may facilitate Low Density Residential Development/Serviced site.

3.0 Planning History

There is extensive planning history associated with the overall landholding under various applicants, these include inter alia Privatcorp Ltd, Noel Frisby Construction Ltd, Magna Construction Ltd, J McNamara & P.O'Brien, Grant Thornton as per WCCC online planning portal.

PA Ref. 08/500087 refers to a grant of permission for 400 houses. Its is stated that this permission expired in 2022.

The most recent recoded application was lodged by Magna Construction Ltd for 96 units (corresponds with the appellants phase 2).

Appellants set out their vision for the development of the lands:

- Phase 1: 27 units completed in 2021.
- Phase 2: At the end of 2021 a new application for 96 units was made and approved in 2022. Commencement Notice lodged and construction to commence early 2023.
- Phase 3, 4 & 5: designs underway for the remaining 3 Phases and it is envisaged that a planning application would be lodged late 2023 either as a single LRD or on a phased basis.
- Given the layout of the scheme and access it is submitted that these phases could not commence until Phase 2 is completed.

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 requesting that lands identified as phase 3, 4 & 5 be omitted until Phase 2 is completed. The country park/open spaces to the north of Parcel B (WDLA00011292) be removed from the draft map. The country park/open spaces to the north of Parcel A (WDLA00028911) be removed from the draft map. And that the Open Space lands forming the Country Park be rezoned to Open Space.

5.0 Determination by the 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 residential development where a residential use is permitted in principle in the development plan.
3. The lands are zoned for a mix of uses where residential development is permitted in principle in the development plan.
4. 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.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The areas associated with phase 3, 4 & 5 in Parcel A (WDLA00028911) be removed from the draft map until such time as the lands are serviced by Phase 2

Request the following.

- The country park/open space to the north of Parcel B (WDLA00011292) be removed from the draft map.
- The country park/open space to the north of Parcel A (WDLA00028911) be removed from the draft map.
- The Open Space lands forming the Country Park be rezoned to Open Space.

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 residential and are considered within scope of section 653B(a)(i).

The appellants requested that the lands identified as phase 3, 4 & 5 be removed as they cannot be developed until phase 2 is completed. The lands are zoned residential and are therefore considered within scope of section 653B(a).

The appellants have submitted that the lands have the benefit of planning permission for 96 residential units (phase 2) with the construction due to commence early 2023 and as such not liable for RZLT.

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.

Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authorities June 2022 states ‘Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps. However owners of residential properties within these areas will not be liable for the tax (see section 653O(1)(a) of the legislation’.

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. The legislation does not give the board a role in determining relevant site by applying the provisions of section 653O. 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”.

Compliance with the provisions of section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

The appellants have requested that the portion of lands referred to as 'County Park' to the north of Area A and Area B be excluded from the maps. I note that there are no exclusions or specific objective pertaining to the area requiring/restricting its use as open space use/recreational use and as such I consider them to be within the scope and do not meet the provision of section 653B(c) for exclusion from the map. And this ground of appeal should be dismissed.

The grounds of appeal also request that lands forming the 'County Park' be re-zoned to open space. The legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I. As set out above the role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

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 Land Parcel ID LKLA00012049 under LCC-C172-RZLT1-11 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

The appellants have set out that phases 3,4 and 5 cannot be developed until such a time as phase 2 is completed and serviced. For the purposes of falling within the scope of RZLT the criteria is whether it is 'reasonable to consider'. As with all development access will be assessed by the relevant planning authority through the development management process. And the applicant/ developer will be expected to provide for any internal road network necessary to serve the site and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the local authority.

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-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) 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

The lands identified as WFD-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) are located on lands where residential use is a permissible use in principle 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.

The lands identified as WFD-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) 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 WFD-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) 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-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) 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-C15-17 (Parcel ID WDLA00011292 and WDLA00028911) 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.

Dáire McDevitt

Senior Planning Inspector

30th August 2023