



An
Bord
Pleanála

Inspector's Report

ABP-316826-23

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	Lands at Rathfadden, Upper Yellow road, Waterford City.
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-8
Appellant(s)	Carey Homes
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the northern side of the upper Yellow Road, c. 775 metres to the west of the edge of the of centre of Waterford. The site contained 1 no. former dwelling structure and has an approximate site area of c. 0.62 hectares. The site is surrounded on all sides by established residential development.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'RS – Existing Residential' in the Waterford City and County Development Plan 2022 to 2028. The relevant zoning objective is '*Provide for residential development and protect and improve residential amenity.*'
- 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).

3.0 Planning History

3.1. Planning History

- 3.2. 21988 (Appeal Ref. no. PL93.313334): S & K Carey Limited. Permission for 17 no. dwellings. Permission was Granted on 22/03/2022 subject to 24 no. conditions. This decision is the subject of a current Appeal to An Bord Pleanála. This case was due to be decided by 17/08/2022 and is now overdue.
- 3.3. 19886: S & K Carey Limited. Permission for 40 no. dwelling units. Application was deemed withdrawn on 18/09/2020.

4.0 Submission to the Local Authority

- 4.1. The Appellant made a submission to the Local Authority seeking to have their land removed from the draft map.
- 4.2. The lands are subject to an Appeal to An Bord Pleanála (Case no. ABP-313334-22, Planning Authority Ref. No. 21988). It is stated that as such we can't develop this land at present.

4.3. It is stated that it would be the intention of the submitter to commence works on this site once planning is granted.

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

6.2. The Grounds of Appeal are summarised as follows:

- Assessment Checklist: The Council in assessing the checklist use the phrase 'land connected to or able to be connected to services.' This is fundamentally incorrect and the criteria that follows is therefore not in accordance with the Act. For example, every piece of land in Ireland would be able to be connected to services (not withstanding at enormous cost). The Act says *'it is reasonable to*

consider may have access, or be connected, to public infrastructure and facilities.' This is significantly different to being able to be connected to services.

- Lands Serviced: Under Section 653B of the Finance Act one of the criteria for inclusion on the draft map is *'is the land connected or able to be connected to services.'* The Council are incorrect in their assessment checklist as these lands do not satisfy all these criteria.
 - They are not readily connectable to the water or wastewater network as there is a requirement for the Irish Water Network to be upgraded.
- An Bord Pleanála: Our planning application on these lands is currently with an Bord Pleanála, Ref. no. ABP-313334-22 thus preventing us from developing these lands. If planning were granted we would be on site at present.
- Build Pipeline: In order to sustain a functioning business developer's need to hold 3 - 5 years build worth of land to ensure delivery pipeline to account for planning delays, local level, preplanning meetings, objections & An Bord Pleanála. From acquisition of a green field site to achieving full planning can take 2 - 3 years.
- Based on the points above the Appellants request the Board to overturn the decision of the Local Authority to include these lands on the draft map indicating lands considered in-scope for the purposes of the Residential Zoned Land Tax.

7.0 Assessment

- 7.1. The comments raised in the appeal are noted.
- 7.2. The subject site is zoned 'RS – Existing Residential' in the Waterford City and County Development Plan 2022 to 2028.
- 7.3. A notification of decision to Grant planning permission was issued by the Local Authority on 22/03/2022 in respect of planning reg. ref. no. 21988 (Appeal Ref. no. PL93.313334). Condition no. 5 a) and 5 b) of the said notification relates to a pre-connection agreement for the proposed development from Irish Water. The planning application is not accompanied by an up-to-date pre-connection agreement from Irish Water. This application, Reg. Ref. no. 21988 (Appeal Ref. No. PL93.313334), is the

subject of a current appeal to An Bord Pleanála. A decision was due by 17/08/2022 and is now overdue.

- 7.4. The said application is accompanied by a previous pre-connection agreement from Irish Water dated 31/07/2019 which relates to a separate proposal for a total of 37 no. units at the site, as Connection Reference No CDS 19003616 (Pre-Connection Enquiry) refers. The letter states that subject to a valid connection agreement being put in place, the proposed connection to Irish Water network(s) can be facilitated.
- 7.5. In my opinion there are viable water and wastewater connections available in proximity to the site. I am satisfied therefore that the site can be reasonably serviced in terms of water and wastewater.
- 7.6. Having regard to the provisions of Section 653B b), it reasonable to conclude, in my opinion, that the site may have access, or be connected, to public infrastructure and facilities, including roads and footpaths.

8.0 Conclusion

- 8.1. The site is 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 for residential purposes. The site does 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 and that the indicated site be retained on the map.

10.0 Reasons and Considerations

- 10.1. The lands identified as WFD-C15-8 (RZLT Land Parcel ID(s): WDLA00010620, WDLA00011263, WDLA0006109 & WDLA0007179), 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. Having regard to the provisions of Section 653B b), it reasonable to conclude that the site 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 and with sufficient service capacity available for such development.
- 10.3. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.4. 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

7th September 2023