



An
Bord
Pleanála

Inspector's Report ABP-316831-23

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 Coxtown, Dunmore East, Waterford.

Local Authority

Waterford City & County Council.

Planning Authority Reg. Ref.

WFD-C15-24.

Appellant(s)

Carey Homes.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as WFD-C15-24 (Parcel ID WDLA00028838) are located at Coxtown in Dunmore East, Co. Waterford.

The Notice of Determination was issued to S&K Carey Ltd. The appellants have a concurrent RZLT appeals under ABP Ref. 317155-23, ABP Ref. 3171179-23 for lands at Killea, Dunmore East. ABP316963-23 for lands at Killure Road, Kilcohan, Waterford. And ABP 316826-23 for lands at Yellow Road, Waterford.

2.0 Zoning and other provisions

The LAPs have been superseded by the land use zoning and other provision of the Waterford City & County Development Plan 2022-2028. This includes inter alia:

Vol. 1 Written Statement

Vol. 3, Appendix 17 Tiered Approach to Zoning. (Section 7 Dunmore East).

Volume 4, Map 2 Zoning and Flooding Map.

The lands are zoned R1 New Residential with a stated objective 'provide for new residential development in tandem with provision of new social and physical infrastructure'.

Specific Development Objective DMD06 applies to the land. "Development proposed on this site shall be required to have regard to the topography of the site, and shall have an appropriate/sympathetic approach to design which utilises the existing contours and respects the established pattern of development in the vicinity".

3.0 Planning History

None noted.

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 services are not adequate. In the process of preparing a planning application on the site which is anticipated to be lodged in Q2

2023. This is a challenging submission due to note DMD06 in the Development Plan for Dunmore east where considerations of the topography of the site and existing development in the area need to be accommodated.

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 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:

- Assessment Checklist: The Council used the phrase 'land connected to or able to be connected to services'. The Act refers to '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:** The Council is incorrect in its checklist. There are not readily connectable water or wastewater network as there is a requirements for the Irish Water network to be upgraded.
- **Build Pipeline:** In order to sustain a functioning business developers need to hold 3-5 years build worth of land to ensure delivery pipeline to account for planning delays, local level, preplanning meetings, objections and An Bord Pleanála. From acquisition of a greenfield site to achieving full planning permission can take 2-3 years.

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.

The appellant have submitted that development of greenfield lands can take up to 3 years when taking into account planning delays/planning process etc and should be considered out of scope on these grounds. 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".

The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B. Timelines/delays associated with acquisition of a greenfield site to achieving full planning permission and commencing on site are not included in the criteria set out under section 653B of the Taxes Consolidation Act 1997, as amended.

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 zoned R1 New Residential are considered within scope of section 653B(a)(i).

The appellant has submitted that the lands are not readily connectable to water or wastewater as there is a requirement for the IW network to be upgraded. 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 watermain and sewer exists on the public road in close proximity to the site and is accessible (c.10m away) via the Convent Road adjoining the land parcel. Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authority 2022 clearly 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 is 'reasonable to consider'. The provision of infrastructure to the subject lands are considered to be in the control of Waterford City & County Council or Uisce Eireann and the local authority determined that the subject lands are in scope and therefore retained within the RZLT Final Map.

The lands identified as WFD-C15-24 (Parcel ID WDLA00028838) can be served in principle by the existing road network that is in place and are zoned residential. UE have confirmed that services are available. 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-C15-24 (Parcel ID WDLA00028838) 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 the lands identified as WFD-C15-24 (Parcel ID WDLA00028838) from the final map.

8.0 Conclusion & Recommendation

The portion of land identified as WFD-C15-24 (Parcel ID WDLA00028838) 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 WFD-C15-24 (Parcel ID WDLA00028838) 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-C15-24 (Parcel ID WDLA00028838) 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 land identified as WFD-C15-24 (Parcel ID WDLA00028838) 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-C15-24 (Parcel ID WDLA00028838) 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

28th August 2023