



An
Bord
Pleanála

Inspector's Report

ABP-316834-23

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 Duckspool, Dungarvan, Co. Waterford
Local Authority	Waterford and City County Council
Local Authority Reg. Ref.	WFD-C15-10
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 L3168 Abbeyside Road, c. 1.8 km to the north-east of the centre of Dungarvan. The site comprises of 2 no. large agricultural fields and has road frontage onto the above public road to the south. The site, which relates to land parcel WDLA00028899, has an estimated site area of 3.05 hectares.
- 1.2. There is an existing low voltage overhead powerline which runs in a general east to west direction located within the southern portion of the site.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'R1 – New Residential' in the Waterford City and County Development Plan 2022 to 2028 and is included within Residential Phase 2. The relevant zoning objective is *'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'*
- 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 R1 (New Residential).
- 2.3. In respect of the Tiered Approach to Zoning, the following is stated in Section 2.11.2 of the Waterford City and County Development Plan, 2022 to 2028, Volume 1 – Written Statement in relation to lands identified as Residential Phase 2:

'The method of land use zoning employed in this Development Plan focuses on delivering the strategic outcomes and priorities of the NPF for Waterford City and County. The approach taken considers the provisions of NPO 72(a), (b) & (c) of the NPF4, paying particular attention to the infrastructural services available, thereby adopting a Tier 1 and Tier 2 approach to the release of land for residential development during the life of the plan. This has avoided the inappropriate zoning of land for development where such land cannot be serviced during the life of the plan. Appendix 14 of the Development Plan sets out the notional cost of addressing infrastructural deficits which will be required

to be addressed prior to Tier 2 lands being available for development during the life of this Development Plan.

Section 6 and SPPR DPG 7 of the consultation draft Development Plans: Guidelines for Planning Authorities (August 2021) identifies how lands which are suitable for residential development can be tiered/ phased or prioritised in the Development Plan. This sequential approach develops further the Tiered Approach to Zoning and gives due cognisance to the principles of compact growth and utilisation of existing infrastructure as set out in the NPF and RSES.

In a manner consistent with SPPR DPG 7, the new residential land use zoning (R1 GZT) provisions of the Plan are defined as either phase 1 or phase 2 lands as per the series of maps below. Generally, save for the phase 2 lands identified in the maps, all other R1 zoned lands can be taken as being phase 1.

In addition to the provisions of the Guidelines and the sequential approach to development, the phasing approach set out in the Plan also takes cognisance of the unique pattern of land ownership across our larger urban settlements, the likelihood of development lands coming to market, the availability of services and development activity in the area. The phasing approach seeks to ensure that development on larger land holdings follows a sequential pattern and in this regard the following should be noted:

- All lands zoned for new residential development (R1) are considered to be developable during the lifetime of the Development Plan.*
- R1 zoned lands not specifically identified as phase 2 shall be considered phase 1.*
- Within any landholding all phase 1 lands shall be developed or committed to development prior to any development being proposed/permitted on phase 2 lands within that landholding.*
- All planning applications for development on phase 2 lands shall be supported by documentation to clearly identify that phase 1 lands within the landholding have been developed out, are committed to development and that the implementation of any such permitted*

development is imminent, or that phase 1 lands are not available within the landholding.'

- 2.4. Part of the southern portion of the lands is identified on the Land Use Zoning Map for Dungarvan, attached to the Waterford City and County Development Plan, 2022 to 2028, as being within Flood Zones A & B.
- 2.5. Appendix 17 of the Waterford City and County Development Plan, 2022 to 2028 relates to a Tiered Approach to Zoning. This includes a site-specific Infrastructure Assessment for relevant lands. The site which is identified as Site 2 (Duckspool (South)), see Table 5B: Dungarvan/ Ballinroad Phase 2 Site Specific Infrastructure Assessment. The site scores 1¹ in relation to Roads, Footpath, Water Supply and Wastewater. It is further indicated that the overall site does not fall within the definition for lands qualifying as necessitating Compact Growth² or where Public Transport³ is available. The lands are similarly not indicated identified as lands where a Coordinated Approach⁴ to development is required.
- 2.6. Specific Objective DO21 relates to the lands to the immediate north-east of the subject lands which are zoned 'OS – Open Space and Recreation'. The said Specific Objective reads as follows:

'DO21 – Duckspool – The land to the east of the Abbeyside GAA pitch shall be reserved for future expansion of the existing facilities.'

3.0 Planning History

3.1. Planning History on the subject site

- 3.2. 21346 (Appeal Ref. No. PL93.312657): S & K Carey Ltd. Permission for 77 dwellings. A notification of decision to GRANT planning permission was issued by the Local

¹ Score 1: Existing infrastructure can support the development of the site, subject to on-site works, some minor works at access points or linking into available existing systems.

² Compact Growth: Proximity to the town centre and services – distance of no more than 1km or 5 min walk from the town and neighbourhood centre is desirable.

³ Public Transport: Whether public transport modes are available within proximity of the site or connected walking & cycle routes provide easy access to public transport and services.

⁴ Coordinated Approach: That the development of the land will contribute to or complete the strategic development of the wider area.

Authority on 12/01/2022. Permission was subsequently REFUSED on 07/09/2022 following an Appeal to An Bord Pleanála for the following reasons and considerations:

'Policy Objective Trans 09 of the Waterford City and County Development Plan 2022 -2028 seeks to 'ensure that all developments can provide full connectivity/ permeability to the adjacent road network (pedestrian, cycle and vehicular) and/ or to adjacent lands'. This policy objective is considered to be reasonable. The proposed development includes an access road which is intended to serve the appeal site, adjacent lands in the ownership of the applicant to the north and east and adjoining residentially zoned GAA club lands to the west. The design of the access road is considered to be over engineered, and its overall function and tie-in with adjacent landholdings is undefined. The cumulative impact of future development proposals on the lands which will be served by the access road is not assessed within the Traffic and Transportation Impact Assessment. The proposed development is considered to represent a piecemeal and haphazard development of the lands and is therefore considered to be contrary to the requirements of policy objective TRANS 09 of the development plan and contrary to the proper planning and sustainable development of the area.'

- 3.3. Relevant Planning History in the general area (Lands to the immediate south of the subject site on the southern side of Dungarvan Ring Road).
- 3.4. ABP-310782-21: Strategic Housing Development Application. Applicant: Michael Ryan. Permission for 218 residential units, creche and associated site works. Permission was GRANTED on 26/10/2021 subject to 34 no. conditions.

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 Appellant requested to have the lands highlighted on an attached map be excluded from the Residential Zoned Land Tax draft map as the lands were the subject of an appeal to An Bord Pleanála (case No. ABP-312657-22, Planning Authority Ref. No.:21346) where the outcome was planning was not granted. We are in the process

of making a new planning application on this site and have held pre-planning meetings, (Ref. 20-04 Duckspool).

- 4.3. The Appellant states that it would be their intention 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

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.
 - These lands are not connected to Irish Water waste-water network and in order to be connected there is a requirement for the Irish Water network to be upgraded. It would seem unfair that we would have to pay for an upgrade (increasing pipe size) which will significantly benefit other zoned land in the area and at the same time be included in Residential Zoned Land Tax even though no such services exist at present.
 - These lands are not connected to the storm water network as from our pre-planning meetings for these lands there is a requirement to lay a new storm water pipe. These works have been agreed and discussed with a Senior Engineer of the Local Authority. To the Appellant it would seem unfair that they would have to pay for an upgrade (increasing pipe size) which will significantly benefit other zoned land in the area and at the same time be included in Residential Zoned Land Tax even though no such services exist 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 lands are zoned for residential use, Residential Phase 2. There are no Residential Phase 1 lands within the landholding. An application for residential development on the lands can therefore be considered by the Planning Authority having regard to the Guidance provided in Section 2.11.2 of the Plan, as quoted above in Section 2.3 of this Report. On this basis the subject lands are considered to satisfy the criteria for inclusion on the map, as per Section 653B a) i) of the Act.
- 7.3. Uisce Eireann, as per the letter dated 8/06/2021 attached to planning file ref. no. 21/346 (Appeal Ref. no. Appeal Ref. No. PL93.312657) and stamped received by the Local Authority on 02/12/2021, state that a Water Connection is feasible without infrastructure upgrade by Irish Water. It is further stated that capacity currently exists in the potable water network to support the proposed development and that it must be noted that the current available capacity may reduce should other applicants subsequently enter into a connection agreement with Irish Water.
- 7.4. In relation to a Wastewater, it is stated in the same letter that such a connection is feasible subject to upgrades. It is further stated that such a connection can be facilitated subject to upgrade of and provision of additional storage at Barnawee Wastewater pumping station. It is also further stated that the required upgrades are not on Irish Water's investment plan, hence the applicant will be required to contribute the relevant portion of the costs. Irish Water state that it is anticipated that the delivery of the required infrastructure will require planning permission/ statutory consents and that it is estimated that the delivery of the infrastructure will take approximately 3 years to complete. Finally, it is stated that this timeframe may be subject to change.
- 7.5. Having regard to the above and to recommendations provided in Section 3.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022, under the heading of Serviced Land Definition, I am satisfied that the subject lands should remain in scope with regard to the feasibility of a Water and Wastewater connection to serve the lands.
- 7.6. In respect of Surface Water drainage, it is noted that there is an existing surface water infrastructure along the public road fronting the appeal site. There is nothing to suggest

that subject lands cannot be suitably serviced in terms of surface water treatment and/or disposal.

- 7.7. Part of the southern portion of the lands is identified as being within Flood Zones A & B. This, in of itself, is not considered to preclude residential development on the overall landholding.

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-C15-10 (RZLT Map Parcel ID: WDLA00028899), 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. 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

1st September 2023