



An
Bord
Pleanála

Inspector's Report

ABP-316887-23

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 Ballyvolane, Ballyhooly Road, Cork
Local Authority	Cork City Council
Local Authority Reg. Ref.	CRK-RZLT-50.5
Appellant(s)	O'Flynn Group
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject appeal site is located in the townland of Ballyvolane, on the northern side of the Ballyhooley Road, c. 2.54 km northeast of Cork city centre. The subject appeal site is undeveloped at present and comprises of agricultural lands which form part of a larger landholding.
- 1.2. Land Parcel ID (s): CCLA0033663, CCLA00033682, CCLA00033665, CCLA00027746 & CCLA00029833 which are the subject of the Local Authority Determination, have an estimated site area of c. 9.69 hectares. It is noted that the appeal site, as identified in a black dashed outline in figure 1 of the appeal submission, is focused on the northern portion of the landholding. The Appeal site area is estimated to measure c. 3.32 hectares. The overall site rises steadily in a general northern direction from the public road to the south.
- 1.3. It should be noted that there are 3 no. other concurrent RZLT Appeals in the general locality of the subject site for which decisions are pending, as follows:
 - Appeal Ref. No. 317011-23: Crystal County Ltd. Lands located to the west/north of the appeal site.
 - Appeal Ref. No. 317014-23: Longview Estates Limited. Lands located to the west/north of the appeal site.
 - Appeal Ref. No. 316696-23: Waterrock View Ltd. Lands located to the west/north of the appeal site.

2.0 Zoning and other provisions

- 2.1. The site/ lands which is the subject of this appeal are zoned '*ZO 02 New Residential Neighbourhoods. Zoning Objective 2: To provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.*'
- 2.2. The appeal site is categorised as Tier 2 lands in the Growth Strategy Map 2022 to 2028 (Figure 2.21) of the Cork City Development Plan, 2022 to 2028. Tier 2 sites are lands which are considered serviceable by physical infrastructure within the life of the plan. The majority of the overall site which is the subject of the Local Authority

determination is indicated as a site within a Greenfield Area and within the overall Sub City Area, see Figure 2.22 of the Plan.

2.3. The lands are located within the Inner Urban Suburbs of Cork City and form part of the Ballyvolane (West) City Expansion and Consolidation Area.

2.4. 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.

2.5. The following Objectives are considered to be of relevance:

- Objective 10.75: Ballyvolane East and West Expansion Areas. *‘To support the compact growth and development of Ballyvolane East and West Expansion Areas as strategic City consolidation and expansion areas, as identified in the Core Strategy. All development shall be designed, planned and delivered in a co-ordinated and phased manner, using a layout and mix of uses that form part of an emerging neighbourhood integrated with the wider area.’*
- Objective 10.76: Ballyvolane Framework Plan. *Cork City Council will work with relevant stakeholders to produce a Framework Plan to support the sustainable growth of Ballyvolane and provide a coherent and coordinated land use plan for Ballyvolane and its immediate environs.’*

2.6. Chapter 12 of the Plan relates to Land Use Zoning Objectives. In relation to ZO2: New Residential Neighbourhoods, the following is stated under ZO 2.1:

‘ZO 2.1 Lands in this zone are designated as Tier 1 or Tier 2 zoned lands in the Core Strategy. Any development proposals must satisfy the requirements for developing on Tier 1 or Tier 2 lands set out in Chapter 2 Core Strategy.’

2.7. In relation to ZO15: Public Open Space, the following is stated under ZO 15.2:

2.8. *‘ZO 15.2 There is a presumption against developing land zoned Public Open Space for alternative purposes.’*

2.9. Cork Metropolitan Strategic Area Plan

- Cork MASP Policy Objective 9
 - Strategic Road Network Improvements

- *‘To seek delivery of the following subject to the outcomes of required appropriate project appraisal, planning and environmental assessment processes including SEA/AA as appropriate. The upgrade of public transport networks must be the priority for strategic road network improvements under this objective. Sustainable proposals that facilitate the implementation of public transport networks on the strategic road network will be supported.*

....

- 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.*

....

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

3.0 Planning History

3.1. Planning History

- 3.2. ABP-312076: O'Flynn Construction Co. Unlimited. Strategic Housing Development (SHD). Permission for 275 no. residential units (205 no. houses, 70 no. apartments), creche and associated site works. Permission was GRANTED on 25/03/2022 subject to 26 no. conditions.

4.0 Submission to the Local Authority

- 4.1. The Appellant made a submission to the Local Authority seeking to have his land removed from the draft map.
- 4.2. The Appellant submits that development cannot commence or proceed until such time as the Local Authority confirm that compliance has been achieved under SHD planning

reg. ref. no. 312076. The Appellant submits that therefore the site/ property should be deemed exempt from the taxation measure.

- 4.3. The Appellant submits that part of the site/ property cannot be developed as it is deemed to be reserved for the norther relief road corridor. The final emerging route corridor is awaited.

5.0 **Determination by the Local Authority**

- 5.1. The Local Authority Evaluation Report dated 31/03/2023 relates to Land Parcel ID (s): CCLA0033663, CCLA00033682, CCLA00033665, CCLA00027746 & CCLA00029833.

- 5.2. Having evaluated the submission, it is considered that the land DOES constitute land satisfying the criteria as per Section 653E (1) (a) (ii) (I) of the Taxes Consolidation Act, 1997 as amended, therefore it is recommended that the land(s) at Ballyvolane, Ballyhooly Road, Cork should be INCLUDED in the final map for the following reasons:

- 5.3. Reason(s)

- 5.4. The land is included in the Cork City Development Plan 2022 - 2028, in accordance with Section 10 (2) of the Act of 2000 and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.

- 5.5. These lands satisfy Section 653B (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 and with sufficient service capacity available for such development.

- 5.6. The Local Authority Determination Letter dated 31/03/2023 refers to Land Parcel ID (s): CCLA00033663, CCLA00033682, CCLA00033665, CCLA00027746 & CCLA00029833 in the header.

- 5.7. It is stated that by Order dated 28/03/2023 it was decided to INCLUDE the above land from the final map of the Residential Zoned Land Tax for the following reason(s):

- 5.8. The land is included in the Cork City Development Plan 2022 – 2028, in accordance with Section 10 (2) of the Act of 2000 and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.

5.9. These lands satisfy Section 653B (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 discharge and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

6.0 The Appeal

6.1. Grounds of Appeal

The Grounds of Appeal are summarised as follows:

- The Appealed Land is not 'land which satisfies the relevant criteria' within the meaning of Section 653B of the Taxes Consolidation Act 1997 as amended ('the TCA').
- Development of the Appealed land is premature pending the Cork Northern Distributor Road Route Selection.

7.0 Assessment

7.1. The comments raised in the appeal are noted. The Local Authority has submitted a copy of the Determination. There is no Local Authority Report/ Assessment on file.

7.2. The Appeal submission refers to the appeal site as that out lined in dashed black line, see Figure 1.

7.3. The lands are zoned 'ZO 02 New Residential' and are categorised as Tier 2 lands in the Growth Strategy Map 2022 to 2028 (Figure 2.21) of the Cork City Development Plan, 2022 to 2028.

7.4. The Inspectors Report attached to SHD Planning reg. ref. no. 312076 refers to wastewater facilities to serve the adjacent site to the south. As noted in Section 10.7 of the said Report a Wastewater connection can be facilitated subject to upgrades. Condition no. 6 of the said permission relates to an obligation on behalf of the developer to enter into a water and or wastewater connection agreement(s) with Irish Water prior to the commencement of development. It is further stated in the Report

that Irish Water IW confirm that a water connection to the development is feasible without any upgrades.

7.5. Condition no. 3 of SHD Planning Reg. Ref. No. 312076 relates to a phasing condition and reads as follows:

‘3 a) The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

b) A 20 metre corridor on the Ballyhooly Road shall be reserved for future sustainable transport infrastructure.

Reason: To ensure the timely delivery of services and infrastructure for the benefit of the occupants of the proposed dwellings and in the interest of traffic safety.’

7.6. I am satisfied therefore that it is reasonable to consider that on the relevant dates the lands which are subject to this appeal, did not have access to foul sewer drainage or a connection to a public water supply necessary for dwellings to be developed. On this basis therefore the lands should be removed from scope. At some point into the future the subject lands may become serviceable/ have access to foul sewer drainage/ public water supply.

7.7. Specific reference is made to the subject appeal site in the Infrastructure Development Report dated 20/01/2023 attached to the Chief Executives Report which informed the decision on SHD planning reg. ref. no. 312076. The said Report is attached as part of the Appeal Appendices. Following on from an initial opinion presented to the developer, the scheme was amended to omit two fields to the north of the proposed development from the application. Concerns had been raised by the Council that in relation to a possible conflict with the potential Cork Northern Distributor Route.

7.8. The Local Authority determination has not referenced any potential impact the Cork Northern Distributor Road may have on the lands before the Board.

8.0 Conclusion & Recommendation

- 8.1. The land identified as CRK-RZLT-50.5 (Land Parcel ID (s) CCLA00027746 & CCLA00029833) 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.
- 8.2. 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-50.5 (Land Parcel ID (s) CCLA00027746 & CCLA00029833) from the final map.

9.0 Reasons and Considerations

- 9.1. 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-50.5 (Land Parcel ID (s) CCLA00027746 & CCLA00029833) are not considered in scope of section 653B(b) of the Taxes Consolidation Act 1997 as amended.
- 9.2. *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

21st September 2023