



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316899-23

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<b>Type of Appeal</b>	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
<b>Location</b>	Lands at Ardarostig, Waterfall Road, Bishopstown, Co. Cork
<b>Local Authority</b>	Cork City Council
<b>Local Authority Reg. Ref.</b>	CRK-RZLT-40
<b>Appellant(s)</b>	Ardstone Residential Partners Fund
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject appeal site is located on the southern side of the Waterfall Road, in Bishopstown, Cork City.
- 1.2. The subject Land Parcel ID: CCLA00074366, has an estimated site area of c.9.3 hectares.

## 2.0 Zoning and other provisions

- 2.1. The site which is the subject of this appeal is 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 lands 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. Tier 2 sites are lands which are considered serviceable by physical infrastructure within the life of the plan. The subject site is indicated to be within a Greenfield area as opposed to within the existing built-up footprint, see Figure 2.22 of the Plan.
- 2.3. The lands are located within the Outer Suburbs of Cork City, as defined on Map 08 – South-Western Suburbs, Volume 2 of the Development Plan.
- 2.4. 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.'*

## 3.0 Planning History

- 3.1. Planning History
- 3.2. ABP-310274-21: Ardstone Homes Limited. Strategic Housing Development (SHD). Permission for 276 no. residential units (137 no. houses, 139 no. apartments), creche and associated site works. Permission was GRANTED on 16/09/2021 subject to 26 no. conditions.

3.3. ABP-303137-18: Ardstone Homes Ltd. Strategic Housing Development (SHD). Permission for 240 no. residential units (154 no. houses and 86 no. apartments) and associated site works. Permission was REFUSED on 20/03/2019 for the following 3 no. reasons.

1. *Having regard to the scale of the proposed development, and the resulting volumes of vehicular and pedestrian/cyclist traffic likely to be generated, it is considered that the proposed development would be premature by reference to existing deficiencies in the local road network in terms of capacity, width, alignment, public lighting, and pedestrian and cycle facilities, and where these deficiencies would render the network unsuitable to carry the increased road traffic likely to result from the development, and the period within which the constraints involved may reasonably be expected to cease. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *It is considered that the proposed interface of the development with Waterfall Road would militate against the creation of an attractive and active urban streetscape. The provision of a stone wall in conjunction with a railing for the entire length of the site frontage, notwithstanding the difference in road levels across the site frontage, is considered to detract from the passive surveillance and creation of an active urban streetscape reinforcing the function of Waterfall Road as a road, which is contrary to the principle of Design Manual for Urban Roads and Streets. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
3. *The Board has serious concerns regarding the future residential amenity of the proposed development and in particular the proposed duplex units. The ground floor units of Duplex Blocks A and B have limited daylight/sunlight to the rear of these units, poor quality private amenity space and poor outlook from the main living accommodation to the private amenity space. The configuration and access to private and semi-private amenity space serving the corner duplex units, A1, A2 and A3 is inappropriate and would be prejudicial to the residential amenity of the future occupants of these units. It is considered that the overall design of the proposed development,*

*including a poor disposition of public open spaces and a significant series of level differences between the proposed houses, and their private open spaces, would offer a poor standard of amenity for future residents and would set an undesirable future precedent for inappropriate private and semi-private amenity space provision. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

#### **4.0 Submission to the Local Authority**

- 4.1. The Appellant made a submission to the Local Authority seeking to have the land removed from the draft map.
- 4.2. ZLT is a taxing statute and those must be interpreted strictly:
  - Appellant references:
    - Bookfinders Ltd. V The Revenue Commissioners [2019] IECA 100;
    - Inspector of Taxes v Kiernan [1981] IR 117;
    - Dunnes Stores v Revenue Commissioners [2020] IESC 60;
- 4.3. The purpose of the ZLT is to encourage the timely activation of zoned and serviced residential development land for housing, rather than to raise revenue. The owner should not be burdened with the tax where the imposition of the tax would prevent, rather than encourage, the activation of land for residential development.
- 4.4. The site must be excluded because it is not, for the purposes of the ZLT Act, serviced land.
- 4.5. For the purposes of the Planning Acts, the site is serviced.
- 4.6. Where residential development is dependent on improvement of public infrastructure or facilities, whether planned, permitted or in the course of construction, the Site must be excluded.
- 4.7. As explained by the High Court, in Navratil v. An Bord Pleanála [2020] IEHC 292, when dealing with this issue under the VSL Act, the fact deficiencies in public infrastructure and facilities 'can or will be' addressed is not relevant to the legal test. In the same

way, the fact we might have plans within our control, that would resolve any such deficiency, whether within the Site or not, is likewise irrelevant.

- 4.8. The site must be considered by reference to the facts and circumstances now existing. When considered in the manner, it is clear that the Site is not, for the purposes of the ZLT Act, serviced land.
- 4.9. With respect to foul sewer drainage, Uisce Eireann have identified upgrades needed to the system in order for the site to be serviced. Specifically, a pumping station near the Site has been identified as needing upgrade.
- 4.10. Appellant refers page 24 of the Guidelines, where land will be 'out of scope' where works to connect the lands to services in the public road require planning permission, are not minor and require access to third party lands.
- 4.11. The Appellant refers to materially significant works.

## **5.0 Determination by the Local Authority**

- 5.1. 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 Ardarostig, Waterfall Road, Bishopstown, Co. Cork should be INCLUDED in the final map for the following reasons:
  - 5.2. Reason(s)
  - 5.3. 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.
  - 5.4. 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.
  - 5.5. 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:

- The site must be excluded because it is not, for the purposes of the ZLT Act, serviced land.
- For the purposes of the Planning Acts, the site is serviced.
- Where residential development is dependent on improvement of public infrastructure or facilities, whether planned, permitted or in the course of construction, the Site must be excluded.
- As explained by the High Court, in *Navratil v. An Bord Pleanála* [2020] IEHC 292, when dealing with this issue under the VSL Act, the fact deficiencies in public infrastructure and facilities ‘can or will be’ addressed is not relevant to the legal test. In the same way, the fact we might have plans within our control, that would resolve any such deficiency, whether within the Site or not, is likewise irrelevant.
- The site must be considered by reference to the facts and circumstances now existing. When considered in the manner, it is clear that the Site is not, for the purposes of the ZLT Act, serviced land.
- With respect to foul sewer drainage, Uisce Eireann have identified upgrades needed to the system in order for the site to be serviced. Specifically, a pumping station near the Site has been identified as needing upgrade.
- Appellant refers to page 24 of the Guidelines, where land will be ‘out of scope’ where works to connect the lands to services in the public road require planning permission, are not minor and require access to third party lands.
- The Appellant refers to materially significant works.
- The Appellant questions the Local Authority determination and states there is nothing to explain how it reached any different view. The Appellant states that there is no reference to engagement with Uisce Eireann to ascertain its view of the position, or to Drainage Planning within the Council proper.

- The Appellant states that for all these reasons, they request the Board to set aside the determination of the Council and allow the appeal under Section 653J(5)(ii).

## 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. Planning permission was previously GRANTED on the lands for 276 no. residential units, as SHD Planning Reg. Ref. No. ABP-310274-21 refers. Condition no. 13 of SHD Planning Reg. Ref. No. ABP-310274-21 is a prior to commencement condition which requires the developer to enter into water and or wastewater connection agreement(s) with Irish Water.
- 7.3. Uisce Eireann, as per the Report dated 24/01/2023, confirm that a watermain exists on the public road in close proximity to the site and that available GIS data indicates that the watermain is accessible 10m away along the Waterfall Road. It is further stated that capital upgrades may be required to cater for the entire development.
- 7.4. As per recommendations contained in Section 3.1.1 of the Residential Zoned Land Tax Guidelines, 2022, I am satisfied that it is reasonable to consider, notwithstanding the potential need for capital upgrades, that the lands may have access to a water supply.
- 7.5. Uisce Eireann, as per the Report dated 24/01/2023, confirm that a foul sewer exists within the confines of the site. It is further stated that there is potential to connect to existing Waterfall Road Pumping Station (PS) with limited capacity and that capital upgrades may be required for the Pumping Station (PS) and down stream network to cater for the entire development.
- 7.6. The existing Waterfall Road Pumping Station is referenced in the Inspectors Report attached to the consented SHD Application, ref. ABP-310274-21, see Section 12.12.1 Water and Wastewater. The said existing pumping station is stated to be located on lands outside of the defined redline boundary of the consented SHD site and serves the existing 4 no. houses to the north-west of the subject site along Waterfall Road. In order to connect to the wastewater network, it is stated that, it will be necessary to

decommission the existing pumping station and construct a new pumping station to pump wastewater within the confines of the existing pumping station compound across the N40 South link road into the Cork City sewer network.

- 7.7. It is further stated that the sewer network in this area is currently at capacity and upgrades to the network will be required to facilitate this connection and that Irish Water notes that it is the applicant's responsibility to seek appropriate consents to deliver the works.
- 7.8. The Appellant refers to the fact that they might have plans with their control that would resolve any deficiency.
- 7.9. As per recommendations contained in Section 3.1.1 of the Residential Zoned Land Tax Guidelines, 2022, I am satisfied that it is reasonable to consider, notwithstanding the potential need for capital upgrades, that the lands may have access to a wastewater treatment/ disposal.
- 7.10. Having regard to the above and to recommendations contained in Section 4.1.1 iii) (Services to be considered) of the Residential Land Zoning Tax Guidelines for Planning Authorities, 2022, I am satisfied that it is reasonable to consider that upon the relevant dates, the subject lands were in scope as per the provisions of Section 653B b) of the Act.

## **8.0 Conclusion**

- 8.1. The site does satisfy the criterion for inclusion on the map set out in Section 653B(b) 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 CRK-RZLT-40 (Land Parcel ID (s): CCLA00074366), meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended.
- 10.2. *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.*

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Frank O'Donnell  
Planning Inspector

25th September 2023