



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316946-23

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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 |
| <b>Location</b>                     | Lands at Knockane, Newcastle West, Co. Limerick.  |
| <b>Local Authority</b>              | Limerick County Council   |
| <b>Planning Authority Reg. Ref.</b> | LCC-C172-RZLT1-46.  |
| <b>Appellant(s)</b>                 | John Upton.   |
| <b>Inspector</b>                    | Daire McDevitt  |

## **1.0 Site Location and Description**

The lands identified as LCC-C172-RZLT1-46 includes 2 separate plots of land: Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) which are located at Churchtown in Newcastle West, Co. Limerick.

## **2.0 Zoning and other provisions**

Newcastle West Local Area Plan 2014-2020 (extend to April 2024) is the current operative Plan.

The lands are the subject land use zoning objective 'Residential Development Area Please 1'

New Residential Development Area: This zoning provides for new residential development and other services associated with residential development. While housing is the primary use in this zone, recreation, education, crèche/playschool, sheltered housing and small corner shops are also envisaged, subject to the preservation of residential amenity, traffic considerations and compliance with Section 5.5 in Chapter 5 of the Plan.

The Draft Newcastle West Local Area Plan 2023 was on display from the 6<sup>th</sup> May to 19<sup>th</sup> June 2023

## **3.0 Planning History**

Reference to a 2007 application in the appeal documentation (no reference number included).

Planning Register on the Council website shows PA Ref. 072760 by Nautic Building Co. Ltd for 180 houses, 27 apartments, creche, distributor road linking N21 to Knockane Road, access off N21, etc that was deemed withdrawn.

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

The appellant made a submission to the local authority seeking to have his land removed from the draft map on a number of grounds, which included inter alia that

the lands are in agricultural use, financial reasons, capacity constraints (WW) and lack of public infrastructure.

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

The local authority determined that:

a) Under section 653I

The Limerick Development Plan 2022-2028 includes a Core Strategy for housing growth in line with National and Regional projected population growth requirements. As a result, the Local Authority does not propose to make a variation under section 13 of the Planning and Development Act 2000 (as amended) to amend the zoning of these lands at this time. However in order to ensure the Newcastle West Local Area Plan complies with Core Strategy a review of the Local Area Plan has commenced and consideration of the zoning of all lands will be undertaken during this process. It is envisaged that the Draft Local Area Plan will go on public display in the coming months and you are invited to engage with this process.

b) Under Section 653E:

1. The land in question is included on a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development.
2. The land is serviced, or is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be

developed and for which there is a services capacity available sufficient to enable housing to be developed.

3. The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains.
4. As stated in the Guidelines, matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in - scope, finance or personal circumstances are not matters to be taken into account during consideration of submissions.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Grounds of appeal are summarised as follows:

- No capacity in the public infrastructure. The local authority did not take into consideration if there is sufficient capacity to support development in the wider area zoned. Only considered whether or not connections were available.
- The Council also only focused on water and wastewater and ignored other public infrastructure (roads).
- It is contented that without suitable consideration of capacity constraints and without carrying out the required assessment of said capacity that the decision of the Council should be overturned. WWTP at capacity and major upgrades required.
- Reference to OPR submission on the Draft LAP. It is submitted that on the cut off date for submissions on the Draft LAP (October 2022) that the lands could not be deemed to be Tier 1 or tier 2 and as such should be excluded from the RZLT map.
- Request that the Board consider whether the current LAP, on which the RZLT map is based, is consistent with the standards set out in the OPR correspondence.

- Planning history not considered in the assessment. 2007 application highlighted difficulties regarding access, traffic, wastewater infrastructure capacity and sewerage pipe and water supply capacity.
- Road infrastructure can not accommodate existing traffic and any additional volumes would exacerbate this. Requirement for a distributor road.
- The total area zoned in the current LAP is incorrect and significantly overstated. Reference to OPR submission.

Documentation included:

- Original submission which raised the issue of agricultural use of the lands, finance, accept constraints and public infrastructure.
- OPR submission on Issues Paper for the proposed review of the Newcastle West LAP.
- Extract from Newcastle West LAP 2008.

## **7.0 Assessment**

The comments raised in the appeal are noted. The local authority outlined in its report why it has determined that the site is in scope for inclusion on the RZLT maps.

The appellant has submitted that the OPR have clearly stated that they wish to see a reduction in the total amount of residential zoned land in Newcastle West as part of the adoption of the current Local Area Plan. And the need to prioritise locations within the current Core Strategy which are currently serviced, which the appellant submits that appeal lands are not. A copy of OPR submission to Limerick City & County Council on the Issues Paper for the proposed review of the Newcastle West LAP dated 13<sup>th</sup> March 2023 is submitted to highlight this.

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. The legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I. 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”.

Compliance with the provisions of section 653I or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

Issues relating to finance raised in the original submission which is included with the appeal documentation and as such I shall highlight that financial reasons are a criteria under section 653B.

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 ‘Residential Development Area Please 1’ are considered within scope of section 653B(a).

The appellant has submitted that there are capacity issues as the Newcastle West WWTP is at capacity. The appellant submits that major upgrades would be required to the WW network. 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 all folios associated with the land can be serviced by water and wastewater. UE did not comment on the capacity of the WWTP. The UE Wastewater Treatment Capacity Register published June 2023 has assigned a green status (spare capacity) to Newcastle West with WWTP planned/underway. 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 to 'is reasonable to consider'.

The provision of infrastructure to the subject lands are considered to be in the control of Limerick County Council or Uisce Eireann and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map. The lands 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, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

The appellant raised in their original submission, which is included with the appeal documentation, that the lands should be excluded as in use for agricultural purposes. As noted in the 2022 Guidelines the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. Based on the information available I have no evidence that this is the case. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i).

Having regard to the foregoing I consider that the lands zoned residential identified as Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## **9.0 Conclusion & Recommendation**

The portion of land identified as Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 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 the lands identified as Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 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 Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 the map.

## **8.0 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 Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 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. is portion of the lands identified as Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 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 Site 1 (Land Parcel LKLA00012449) and site 2 (Land Parcel LKLA00012449) under LCC-C172-RZLT1-46 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.*

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Dáire McDevitt

Senior Planning Inspector

3<sup>rd</sup> August 2023