



An
Bord
Pleanála

Inspector's Report

ABP-316960-23

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 Kilcohan, Old Tramore Road, Waterford City.

Local Authority

Waterford City & County Council

Planning Authority Reg. Ref.

WFD-C15-16.

Appellant(s)

Deltacrestor Limited.

Inspector

Daire McDevitt

1.0 Site Location and Description

The lands identified as WFD-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) are located in Kilcohan along the Old Tramore Road in Waterford city.

The submission to WCCC on the Draft Map and the grounds of appeal identify the lands as Area A (WDLA00028888) owned by Deltacrestor with a stated area of c.5.45ha and Area B (WDLA00028847) owned by others with a stated area of c.1.08ha.

The Notice of Determination noted the submitter as Noel Frisby Jr. The Determination was issued to Frisby Homes. The appeal is lodged by Frisby Homes on behalf of Deltacrestor Limited.

There are concurrent RZLT appeals by Magna Capitals Investment Ltd (same address as Frisby Homes) under ABP Ref. 316682 for lands at Cleaboy Road, Waterford. And by Privatcorp Ltd under ABP 316824-23 for lands at Mountneil, Carrickphierish, Waterford City. Pineview Construction Company Limited under ABP 316672-23 for land at Park Road, Waterford. Ryalkea Limited under ABP 316668-23 for lands at Kilbarry and Frisby Homes under ABP 316917-23 for lands at Kilbarry.

2.0 Zoning and other provisions

The relevant plan is the Waterford City and County Development Plan 2022-2028.

Vol. 1 Written Statement

Vol. 3, Appendix 17 Tiered Approach to Zoning.

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'.

The northern portion of the lands are identified as Residential Phase 1 lands.

The southern portion of the lands are identified as Residential Phase 2 lands.

3.0 Planning History

None stated.

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 until such a time a pumping station is installed the whole lands are deficient in infrastructure. The future provision of this infrastructure is outside the control of the owner and therefore should not be include on the draft maps. If necessary the zoning should be amended to designate the lands tier 2/phase 2 with the possibility of services becoming available in the plan period.

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 he planning authority considered that the lands meet the relevant qualifying criteria as set out in the Act an 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:

- Until such a time as a regional pumping station is installed by others all of the subject site is deficient in necessary infrastructure. The future provision of this regional pumping station infrastructure is outside the control of the owner of these lands and should not therefore be included on the draft maps. And the requirement for a possible upgrade of c.900m of public infrastructure outside the ownership and control of Deltacrestor Ltd.

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 grounds of appeal include a copy of the original submission on the draft map to WCCC which includes reference to rezoning of lands. 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 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 portion of lands zoned R1 New Residential are considered within scope of section 653B(a)(i).

The appellant has submitted that until such a time as a regional pumping station is installed by others all of the subject site is deficient in necessary infrastructure. The future provision of this regional pumping station infrastructure is outside the control of the owner of these lands and should not therefore be included on the draft maps. Reference is also made to a requirement for a possible upgrade of c.900m of public infrastructure outside the ownership and control of Deltacrestor Ltd.

The appellant has submitted an extract from a pre-connection enquiry dated March 2022 for 98 units noted a proposal to construct a new pumping station to the south east of the proposed development.

Correspondence on file from Uisce Eireann confirms that a water main on the public road in close proximity to the site and is accessible c.40m away via the Old Tramore Road adjoining the land parcel. And a sewer on the public road in close proximity to the site and is accessible c.10m away via the Old Tramore Road adjoining the land parcel, their records indicate that there is a dry gravity sewer on the Old Tramore Road but revert to local knowledge on this matter. 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.

Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authority 2022 clear 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'. Based on the information available I have no evidence that capacity is an issue. 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 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, 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-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) zoned R1 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 this portion of the lands from the final map.

8.0 Conclusion & Recommendation

The lands identified as WFD-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) are located on lands zoned R1 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-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) 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-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) 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 lands identified as WFD-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) zoned R1 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-C15-16 (Parcel ID WDLA00028888 and WDLA00028847) 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

31st August 2023