



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316963-23

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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 Killure Road, Kilcohan, Waterford City.
<b>Local Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	WFD-C15-11.
<b>Appellant(s)</b>	Carey Homes.
<b>Inspector</b>	Daire McDevitt

## **1.0 Site Location and Description**

The lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) are located at Killure Road, Kilcohan in Waterford city.

The Notice of Determination was issued to S&K Carey Ltd. The appellants have a concurrent RZLT appeals under ABP Ref. 316831-23 for lands at Coxtown, Dunmore East; ABP Ref. 3171179-23 and ABP 317155-23 for separate lands Killea, Dunmore East. And ABP 316826-23 for lands at Yellow Road, Waterford.

## **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 lands are the subject of two Residential Phasing: Residential Phase 1 lands applies to the eastern portion and Residential Phase 2 lands to the western portion.

Specific Objectives DO19 – Course Stream applies to the western portion 'The landscaping and provision of open space for the development of new residential areas shall provide for the following: Incorporating the Course Stream as a central element in public open space and ensure habitat restoration along the length of the watercourse, c.0.2ha of usable open space and habitat areas to be provided across new housing areas to include enhanced tree planting and permeable active travel routes for cyclists/pedestrians along boundary with outer ring road and links between the new housing and existing housing areas'.

### 3.0 Planning History

PA Ref. 22/80) (ABP Ref. 314774-22 refers to a current appeal relating to an application that was granted permission by WCCC for the construction of 99 no. dwellings comprising of: (i) 6 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type A1); (ii) 6 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type A2); (iii) 6 no. two-storey, three-bedroom end of terrace units with optional sunroom and attic conversion (House Type B1); (iv) 3 no. two-storey, four-bedroom mid-terrace units with optional sunroom and attic conversion (House Type B2); (v) 4 no. single-storey, three-bedroom detached units (House Type C1); (vi) 8 no. two-storey, three-bedroom end of terrace units with optional sunroom and attic conversion (House Type D1); (vii) 12 no. two-storey, two-bedroom mid-terrace units (House Type D2); (viii) 2 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type E1); (ix) 2 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type E2); (x) 28 no. two-storey, three-bedroom terraced units with optional sunroom and attic conversion (House Type F1); (xi) 3 no. two-storey, three-bedroom end of terrace units (House Type G1); (xii) 3 no. two-storey, two-bedroom mid-terrace units (House Type G2); (xiii) 6 no. two-storey, two-bedroom mid-terrace units (House Type G3); (xiv) 3 no. two-storey, three-bedroom end of terrace units (House Type G4); (xv) 2 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type H1); (xvi) 2 no. two-storey, three-bedroom semi-detached units with optional sunroom and attic conversion (House Type H2); (xvii) 1 no. two-storey, three-bedroom end of terrace unit with optional sunroom and attic conversion (House Type I1); (xviii) 1 no. two-storey, four-bedroom mid-terrace unit with optional sunroom and attic conversion (House Type I2); (xix) 1 no. two-storey, three-bedroom end of terrace unit with optional sunroom and attic conversion (House Type I3). The proposed development will include pedestrian access, vehicular entrance and alterations to public footpath from Public Road; carparking spaces; bicycle parking area; public open space; foul and surface drainage; street lighting; landscaping; boundary treatments; alterations of site levels and all ancillary site development works necessary to facilitate the development. Appeal undecided to date.

PA Ref. 22/593 refers to an application to raise the levels of approximately 1.93 hectares of agricultural land, for future phases of a proposed housing development by using soil and stone arising from earlier phases of the development and by the use of by-product soil and stone under Article 27 from various other sites for which a waste licence will be required. This was the subject of FI at the time the appellants made their submission on the Draft RZLT map. Permission granted by WCCC in February 2023.

#### **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 the lands at 'Ring Road, Waterford' are the subject of an appeal with ABP (Case No. ABP 314774-22 PA Ref. 22/80) and a separate planning application (PA Ref. 22/593) which is the subject of FI. As such the lands cannot be developed at present.

#### **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 the planning authority considered that the lands meet the relevant qualifying criteria as set out in the Act and 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:

- **Assessment Checklist:** The Council used the phrase 'land connected to or able to be connected to services'. The Act refers to '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:** The Council is incorrect in its checklist. The lands are not connected to the foul drainage network or public water supply. Refers to highlighted section of response to preplanning meeting prepared by WCCC.

There is a requirement for the Irish Water network to be upgraded. Refer to attached response for FI on planning application and Irish Water's response. Also condition no. 7 of permission granted required the construction of a pumping station. It is submitted that it is unfair to have to pay for an upgrade which will significantly benefit other zoned land in the area and at the same time be included in the RZLT even though no such services exist.

Current appeal with An Bord Pleanála (ABP 314774-22) is preventing the appellant from developing the lands.

- **Build Pipeline:** In order to sustain a functioning business developers need to hold 3-5 years build worth of land to ensure delivery pipeline to account for planning delays, preplanning meetings, objections and An Bord Pleanála, etc. From acquisition of a greenfield site to achieving full planning permission can take 2-3 years.

## 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 appellants have submitted that development of greenfield lands can take up to 3 years when taking into account planning delays (current appeal with An Bord Pleanála) /planning process etc and should be considered out of scope on these grounds. 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. Timelines/delays associated with acquisition of a greenfield site to achieving full planning permission and commencing on site are not included in the criteria set out under section 653B of the Taxes Consolidation Act 1997, as amended.

Notwithstanding delays in the planning process. Section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 states " where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope, subject to (iii) below". Section 4.1.1 (iii) refers to services to be considered.

Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authorities June 2022 states 'Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps. However owners of residential properties within these areas will not be liable for the tax (see section 653O(1)(a) of the legislation'.

As set out above, 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 653O or not does not fall within the remit of this report.

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).

A portion of lands are zoned SRR Strategic Residential Reserve. Vol. 2 Table 11.1 Land Use Zoning Objectives in the Waterford City & County Development plan 2022-2028 notes Residential on SRR is subject to Note 12. *"Note 12 In the interest of delivering Housing for All and other programs seeking to provide social and affordable housing, the development of social and affordable housing by an Approved Housing Body, State Agency/Body or the Housing Authority on lands zoned for Strategic Residential Reserve (SRR) may be considered acceptable subject to compliance with the policy objectives and development management standards of the Development Plan. Similarly, social and affordable housing schemes on land zoned Rural Village (RV) may also be facilitated in addition to the requirements of the respective settlement class as set out in the settlement hierarchy (Section 2.9) of the Plan."* This restriction results in this portion of the lands identified as WFD-C15-11 (Parcel ID WDLA00028920,WDLA00028866,WDLA00028860,WDLA00028850,WDLA00028864,WDLA00028828, WDLA00028834,WDLA00028943 and WDLA00028836)not being available for residential development that is not subject to significant restrictions, as such I do not consider that it was available for development for residential uses for the general public at the time the local authority made it Determination and as such should

be excluded from the final RZLT Map on this basis. I am satisfied that this portion of the appeal lands are not within scope of section 653B(a)(i) and therefore the appeal on these grounds should be upheld.

The remainder of my assessment relates solely to the portion of lands zoned R1.

The appellant has submitted that the lands are not readily connectable to water or wastewater as there is a requirement for the IW network to be upgraded/extended and further studies required in relation to water connections. The appellant has submitted a copy of a pre-connection enquiry dated 17<sup>th</sup> May 2022. Correspondence on file from Uisce Eireann confirms that a water main and sewer exit on the public road in close proximity to the site and is accessible c.10m away via the R708 adjoining the land parcel. 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 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 is 'reasonable to consider'. Issues relating to capacity were not raised and I have no evidence that this 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 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-C15-11 (ParcelIDWDLA00028920,WDLA00028866,WDLA00028860,WDLA00028850,WDLA00028864,WDLA00028828, WDLA00028834,WDLA00028943 and WDLA00028836) 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 portion of the lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866,WDLA00028860,WDLA00028850,WDLA00028864,WDLA00028828, WDLA00028834,WDLA00028943 and WDLA00028836) located on lands zoned SRR- Strategic Residential Reserve in the Waterford City and County Development Plan 2022-2028 and as such were not available for residential development at the time the local authority made its Determination. The land is not in-scope of section 653B(a)(i) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021). I recommend that the board set aside the determination of the local authority and direct the local authority to omit the portion of the lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866,WDLA00028860,WDLA00028850,WDLA00028864,WDLA00028828, WDLA00028834,WDLA00028943 and WDLA00028836) located on lands zoned SRR- Strategic Residential Reserve from the final map.

The portion of lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) 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. This portion of the lands identified WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) 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-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) 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 portion of lands as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) located on lands zoned SRR - Strategic Residential Reserve in the Waterford City and County Development Plan 2022-2028 and as such was not available for residential development at the time the local authority made its Determination. The land does not comply with the criteria set out under section 653B(a) and therefore should be omitted from the RZLT

map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021).

The portion of lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) 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. This portion of the lands identified as WFD-C15-11 (Parcel ID WDLA00028920, WDLA00028866, WDLA00028860, WDLA00028850, WDLA00028864, WDLA00028828, WDLA00028834, WDLA00028943 and WDLA00028836) 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.*

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Dáire McDevitt

Senior Planning Inspector

29<sup>th</sup> August 2023