



An
Bord
Pleanála

Inspector's Report

ABP-317011-23

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 Laherdane & Ballyvolane, Cork.
Local Authority	Cork City Council.
Planning Authority Reg. Ref.	CRK-RZLT-23.
Appellant(s)	Crystal County Ltd.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as CRK-RZLT-23 (Land Parcel ID CCLA00029840) refer to lands at Laherdane and Ballyvolane in Cork.

The ground of appeal notes the lands owned by Crystal County Ltd, form part of an overall landbank in Ballyvolane owned by a series of companies in common ownership. The four companies are Waterrock View Ltd, Longview Estates Ltd, Crystal County Ltd and Ballyvolane View Ltd.

There are concurrent appeals under ABP 317014-23 by Longview Estates Limited for lands identified as CRK-RZLT-18 (Land Parcel ID CCLA00029834, CCLA00029835, CCLA00029837, CCLA00027243, CCLA00027246, CCLA00027458, CCLA00027459, CCLA00027464, CCLA00027461 and CCLA00029839) and under ABP 316696-23 by Waterrock View Ltd for lands identified as CRK-RZLT-22 (Land Parcel ID CCLA00027745, CCLA00027439, CCLA00028148 and CCLA00029836). All of which relate to the overall landbank which the current appeal lands form part of.

2.0 Zoning and other provisions

The relevant plan is the Cork City Development Plan 2022-2028.

The lands are zoned ZO 02 New Residential Neighbourhood (Map 12).

Identified as Tier 2 lands in Figure 2.21 'The Growth Strategy Map'.

Section 2.51 notes 'Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan'.

Section 12.14 'Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan'.

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.

Cork MASP

Policy Objective 9(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.

Objective 9(q) - North East Orbital Road (access for residential lands and public transport infrastructure Ballyvolane).

3.0 Planning History

ABP 306325-20 refers to a 2020 grant of permission to Longview Estates Limited for a SHD application for 531 no. Houses and 222 no. apartments, creche and associated site works.

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, requesting that lands be excluded on the basis that inefficient services available and statutory designations applying (ie the parties have agreed a section 47 which impacts many portions of the land bank with the Council on infrastructure provision to service the lands which has only been partly progressed by public bodies). Zoning specifically refers to 'provide for new residential development in tandem with the provision of the necessary social and physical infrastructure'. Land not serviced on the date (8th August 2022) as IW pumping station, rising main and watermain not commissioned/constructed. Other services like public parks and public roads also deficient to allow the area to be considered sufficiently serviced.

5.0 Determination by the Local Authority

The local authority determined that:

- The land is included in the Cork City Development Plan 2022-2028, in accordance with section 10(2)(a) of the Act and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- These lands satisfy section 653(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 for such development.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- There is an extant permission under ABP306325-20 for 753 residential units. The 2020 grant of permission provides for the development to be delivered on a phased basis which includes the phased delivery of public infrastructure and services to allow for full services. Therefore all lands are not available/accessible or serviceable at the same date.
- The lands owned by Crystal County Ltd, form part of an overall landbank in Ballyvolane owned by a series of companies in common ownership. The four companies are Waterrock View Ltd, Longview Estates Ltd, Crystal County Ltd and Ballyvolane View Ltd.
- Waterrock View Ltd (separate appeal regarding land parcel ID CCLA00027745) transferred necessary lands to IW for the required pumping station construction. This should also be excluded as clearly now a 'utility use'.
- Construction of pumping station had commenced and the ancillary rising main, watermain and gravity main to service land are yet to be completed or commissioned. When done this would see the appeal lands as serviceable.

- The Cork Northern Distributor Road and public transport corridor (Ballyvolane Strategic Transport Corridor Scheme) to service the lands has not commenced. In the case of Waterrock View Ltd appeal, the Cork Northern Distributor Road/Inner Northern Distributor Road alignment is needed so as to design meaningful development proposals. Developments in the area considered premature pending its delivery.
- Parcel ID CCLA00029840 should be excluded due to lack of available roads and other public infrastructure.
- Parcel ID CCLA00029840 relates to Phase 5 of the overall development granted under ABP 306325-20 and within the scope of the ‘sufficient services’ definition will not be available until a number of years time.
- Lands to the south (Longview Estates Limited and Waterrock View Ltd) are covered by a section 47 agreement are completed to the point that they can be considered to provide “sufficient service capacity”. The Section 47 agreements apply to workstreams to provide sufficient services to deliver the lands, all within the control of Cork City Council.
- Only Phase 1 was arguably serviced on the 1st October 2021, but still required a watermain extension.

7.0 Assessment

The comments raised in the appeal are noted. The local authority has submitted a copy of the Determination. There is no reports/assessment on file.

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 are zoned ZO02 New Residential Neighbourhood and considered within scope of section 653B(a)(i). The lands have an extant permission which was granted in 2020 and predates the current City Development Plan which has designated the lands Tier 2.

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 grounds of appeal submit that the lands should be excluded as their development is premature pending a decision on the Northern Distributor Road as it cannot be considered that the lands have access to all the public infrastructure necessary for dwellings to be developed.

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.

The provision of infrastructure to the subject lands are considered to be in the control of Cork City 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. There is no correspondence on file from UE. I note there is correspondence from UE for ABP 317014-23 which confirms that a watermain exist on the public road in close proximity to the site via the Ballyhooley Road and that upgrades required are currently under development to cater for the entire site which requires a new water connection from a trunk main on Dublin Hill. UE confirmed that a sewer exists on the public road in close proximity to the site via the Ballyhooley Road which will provide limited capacity) and that upgrades required are currently under development to cater for the entire site which requiring a PS and rising main.

Page 22 of the RZLT Guidelines clearly sets out that “ where planning permissions have been granted subject to requirements for significant infrastructure to be delivered by infrastructure providers, this should not be considered ‘in scope’.

The appellants have submitted that the 2020 grant of permission provides for the development to be delivered on a phased basis which includes the phased delivery of public infrastructure and services to allow for full serving. Therefore all lands are not available/accessible or serviceable at the same date. For the purposes of falling within the scope of RZLT the criteria is whether it to ‘is reasonable to consider’. In my opinion it is not reasonable to consider that the provision of access, footpaths, public lighting, foul, water or surface water drainage may be provided where land is in the control of the landowner or local authority. And while the lands may become available, they were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B.

The local authority in its Determination has not refenced any potential impacts the Cork Northern Distributor Road may have on the lands before the Board.

Having regard to the foregoing I consider that the lands identified as CRK-RZLT-23 (Land Parcel ID CCLA00029840) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The lands identified as CRK-RZLT-23 (Land Parcel ID CCLA00029840) 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. And 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-23 (Land Parcel ID CCLA00029840) does not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

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 CRK-RZLT-23 (Land Parcel ID CCLA00029840) are not considered in scope of section 653B(b) of the Taxes Consolidation Act 1997 as amended.

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

13th September 2023