



An
Bord
Pleanála

Inspector's Report

ABP-317155-23

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 Killea, Dunmore East, Waterford.
Local Authority	Waterford City & County Council
Planning Authority Reg. Ref.	WFD-C15-26.
Appellant(s)	Carey Homes.
Inspector	Daire McDevitt

1.0 Site Location and Description

The lands identified as WFD-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) are located at Killea in Dunmore East, Co. Waterford.

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 for lands (Parcel ID WDLA00028966) at Killea, Dunmore East. ABP 316963-23 for lands at Killure Road, Kilcohan, Waterford. And ABP 316826-23 for lands at Yellow Road, Waterford.

2.0 Zoning and other provisions

The LAPs have been superseded by the land use zoning and other provision of the Waterford City & County Development Plan 2022-2028. This includes inter alia:

Vol. 1 Written Statement

Vol. 3, Appendix 17 Tiered Approach to Zoning. (Section 7 Dunmore East).

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'.

Specific Development Objective DMD07 applies to the land. "Any design proposal shall include a strong building line to the public road, with an emphasis on high quality design and finishes'.

3.0 Planning History

The appellants referred to PA Ref. 21/1133 in their submission on the Draft Map. This refers to an application at 92/92A Upper Yellow Road, Waterford.

PA Ref. 21/1133 refers to a December 2022 grant of permission for 99 dwellings. (ABP Ref. 313782-22, appeal withdrawn December 2022).

I have reviewed the Online Planning Register and note a number of applications for Liam Carey TA Carey Homes and Carey Homes for 2018, 2019 for houses along the

Killea Road in Dunmore East, this includes 18/363 which relates to the housing development.

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 permission granted under PA Ref. 21/133 in December 2022 and it is their intention to start works on these lands in Q1 2023.

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 readily connectable to the water network as further studies are required to be carried out by Irish water. Copy of pre-connection enquiry submitted.

The lands are not served by public wastewater network as there is a requirement for the Irish Water Network to be upgraded. The upgrade will involve a network extension. Copy of pre-connection enquiry submitted. It would seem unfair to have to pay for an upgrade which will significantly benefit other zoned land in the area at the same time to be included in RZLT even though no such services exist at present.

- **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, local level, preplanning meetings, objections and An Bord Pleanála. 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 appellant have submitted that development of greenfield lands can take up to 3 years when taking into account planning delays/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.

The appellant has submitted that the lands have the benefit of planning permission a residential development with construction due to commence in Q1 2023. There is no reference in the local authority assessment to a site inspection. Based on the information available I have no evidence that construction had commenced on the date of the local authority Determination (27th March 2023).

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 lands zoned R1 New Residential are considered within scope of section 653B(a)(i).

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 11th October 2021. There is no correspondence on file from Uisce Eireann on the RZLT. 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. I also note that the lands have an extant permission under PA Ref. 21/1133 for 99 dwellings.

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'. 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 identified as WFD-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) 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-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) 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 the lands identified as WFD-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) from the final map.

8.0 Conclusion & Recommendation

The lands identified as WFD-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) 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-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) 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-C15-26 (Parcel ID WDLA00028966 and WDLA00028812) 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-C15-26 (Parcel ID WDLA00028966 and WDLA00028812). 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 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

29th August 2023