



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317179-23

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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 Killea, Dunmore East, Waterford.
<b>Local Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	WFD-C15-25.
<b>Appellant(s)</b>	Carey Homes.
<b>Inspector</b>	Daire McDevitt

## 1.0 Site Location and Description

The lands identified as WFD-C15-26 (Parcel ID WDLA00028966) 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 at Killea, Dunmore East (same Parcel ID as current appeal). ABP316963-23 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The LAPs have been superseded by the land use zoning and other provision of the Waterford City & County Development Plan 2022-2028.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 SRR Strategic Residential Reserve ‘to provide for long term strategic expansion of residential development’.

Vol. 2 Table 11.1 Land Use Zoning Objectives Notes Residential on SRR 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.*

### **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 the lands are zoned SRR (Strategic Residential Reserve) and as such cannot be developed at present. Furthermore it is submitted that this strip of land forms part of a larger landbank and due to its size cannot be developed in isolation (to facilitate house units and their gardens, roads and services).

### **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 appellants 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.

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

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 11<sup>th</sup> 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) 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. I am of the view that it is reasonable to conclude that the site may have access to public infrastructure and utilities, including roads and footpaths as such complies with criteria for inclusion under section 653B(b). Notwithstanding, and as set out above, the lands are not in scope of Section 653B(a).

## **8.0 Conclusion & Recommendation**

The lands identified as WFD-C15-26 (Parcel ID WDLA00028966) are 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 plot of land identified as WFD-C15-26 (Parcel ID WDLA00028966) from 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 land identified as WFD-C15-26 (Parcel ID WDLA00028966) are 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).

*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