



An  
Bord  
Pleanála

## Inspector's Report ABP-320332-24

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**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 Map

**Location**

Lands at Coolroe, Portlaw, Co. Waterford

**Planning Authority**

Waterford City and County Council

**Planning Authority Reg. Ref.**

WFD-C30-14

**Appellant(s)**

Dermot Fitzpatrick

**Inspector**

John Duffy

## **1.0 Site Location and Description**

- 1.1. The appeal lands, identified as Parcel IDs WDLA00028916 and WDLA00020076 on the RZLT Final Map are located between the Carrick Road to the east and the Scrouty Road to the west, at Coolroe, Portlaw, Co. Waterford.

## **2.0 Zoning and Other Provisions**

- 2.1. The larger land parcel, Parcel ID WDLA00028916 is zoned R1 'New Residential' in the Waterford City and County Development Plan 2022-2028. The R1 zoning objective states the following: 'Provide for new residential in tandem with the provision of the necessary social and physical infrastructure.' The smaller land parcel, Parcel ID WDLA00020076 serves to connect the larger land parcel to the Carrick Road and it is zoned 'Existing Residential' the objective of which is to 'Provide for residential development and protect and improve residential amenity.'

## **3.0 Planning History**

None.

## **4.0 Submission to the Local Authority**

- 4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map on the basis that due to deficiencies in the water supply network it is not reasonable to consider that the subject lands have the required access to public infrastructure and facilities necessary for dwellings to be developed.

## **5.0 Determination by the Local Authority**

5.1. The Local Authority determined that the site is in scope for the following reasons:

- The lands have been assessed in a manner consistent to Appendix 4 and 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.
- The lands are zoned for residential development where residential use is permitted in principle in the development plan.
- 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 lands.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The following points are made in support of the appeal:

- The site is not land which satisfies the criteria as set out in section 653B of the Taxes Consolidation Act 1997 as amended and the decision by the Local Authority was not informed by a satisfactory infrastructural assessment of the subject lands.
- An assessment of the infrastructural works necessary to activate the lands for development demonstrates that the works required are materially significant and the lands should be considered out of scope.
- The subject lands are not connected to a water supply and there is no timeframe for infrastructure in this regard to be delivered. Based on a pre-connection enquiry to Uisce Éireann (UÉ) for 96 units, significant upgrades are needed with 1.7 kms of watermain requiring upsizing. The required upgrade works would have a significant cost and are not considered to be minor works.
- All relevant factors have not been considered in the determination made and the reasons set out do not provide a satisfactory explanation for the decision.

The appeal includes the following attachments:

- RZLT Determination by Local Authority
- Pre-Connection Enquiry Response from UÉ

## 7.0 **Assessment**

7.1 The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, 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".*

7.2 Section 653B of the Taxes Consolidation Act, 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 subject lands zoned 'New Residential' and 'Existing Residential' are therefore within scope of section 653B(a)(i).

7.3 Having regard to section 653B(b) the site is within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities for dwellings to be developed and with sufficient service capacity for such development. The appeal lands are located between Scrouty Road and Carrick Road, having a connection to Carrick Road and adjoining Scrouty Road which is served by a footpath and public lighting.

A main ground of appeal raised is that the lands are not connected to a water supply and that significant and costly upgrade works would be required to achieve such connectivity. I note that UÉ has confirmed to the Local Authority that a water main is accessible approximately 120 m away via the Scrouty Road, while a sewer is accessible approximately 10 m away also on the Scrouty Road. There is also correspondence on the file which confirms that rehab works are on-going in terms of the water supply infrastructure in the area.

In terms of the requirement for upgrades to the existing systems, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states "Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist."

Having regard to the Guidelines, a need for upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended. UÉ's Water Supply Capacity Register notes that the Portlaw Water Supply Zone (WRZ ID: 3100SC0124) is stated to have 'Potential Capacity Available – Level of Service Improvement required' to support 2032 population targets. In terms of the Level of Service Improvement required the capacity register states the following: 'Capacity constraints exist, connection applications will be assessed on an individual basis considering their specific load requirements - Level of service (LoS) improvement required to meet 2032 population targets.

Improvement proposals will include but are not limited to leakage reduction and/or capital investment. These proposals will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process.'

While there are improvements / upgrades required as set out above, in my opinion there is a viable water supply / connection available in proximity to the site and,

therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

UE's Wastewater Treatment Capacity Register for Portlaw is 'Green' meaning that there is spare capacity available. As such, the appeal lands can be served by the treatment plant.

- 7.4 In terms of section 653B(c) it is reasonable to consider that the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains.
- 7.5 Section 653B(c)(i) of the Act provides an exemption for residential zoned land which is in use as a premises that is 'reasonable to consider is being used to provide services to residents of adjoining residential areas.' It must not be an unauthorised use and must be subject to commercial rates. The site comprises greenfield lands and does not meet the criteria for exclusion as set out in section 653B(c)(i).
- 7.6 The grounds of appeal raise issue with the assessment process used by the Local Authority whereby the subject lands were assessed against a checklist for RZLT. While noting that the appellant is dissatisfied with the process used to assess the lands for RZLT and associated purported shortcomings, such matters are not for consideration by the Board in this appeal, as it is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing I consider that the lands identified as Parcel IDs WDLA00028916 and WDLA00020076 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and, therefore, I recommend that the Local Authority determination be confirmed and the lands retained on the map.

## 9.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Parcel IDs WDLA00028916 and WDLA00020076 on the RZLT Final Map zoned 'New Residential' and 'Existing Residential' respectively, are considered to be within scope of Section 653B(a). The lands are located within an established urban area and the Uisce Éireann Water Supply and Wastewater Capacity Registers confirm capacity to serve the lands. The lands have access onto existing road infrastructure or access could be provided. As such no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

## 10.0 Recommended Draft Board Order

**Taxes Consolidation Act 1997 as amended**

**Planning Authority: Waterford City and County Council**

**Local Authority Reference Number: WFD-C30-14**

**Appeal** by Dermot Fitzpatrick in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Waterford City and County Council on the 21<sup>st</sup> day of June 2024 in respect of the site described below.

**Lands at:** Coolroe, Portlaw, Co. Waterford

### **Decision**

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel IDs WDLA00028916 and WDLA00020076 on the final map.

### **Reasons and Considerations**

The lands identified as Parcel IDs WDLA00028916 and WDLA00020076 on the RZLT Final Map zoned 'New Residential' and 'Existing Residential' respectively, are considered to be within scope of Section 653B(a). The lands are located within an established urban area and the Uisce Éireann water supply and wastewater capacity registers confirm capacity to serve the lands. The lands have access onto existing road infrastructure or access could be provided. As such no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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John Duffy  
Planning Inspector

26<sup>th</sup> September 2024