Inspector's Report

ACP-324513-26

Type of Appeal	Appeal under section 653J of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.
Location	Lands at Kilbarry, Cork Road, Waterford
Local Authority	Waterford City and County Council
Planning Authority Reg. Ref.	WFD – C91 - 5
Parcel ID	WDLA000199
Appellant(s)	Noel Frisby Construction Ltd.
Inspector	Erika Casey

1.0 Site Location and Description

1.1 The subject lands identified as (Parcel ID WDLA000199) are located in the southern environs of Waterford City. The lands are greenfield in character and are located to the south of the Cork Road (R680 route). Ballybeg Drive abuts the western boundary of lands. Residential development is located to the south. There is a Circle K located adjacent to the lands to the north east and further undeveloped lands to the east.

2.0 Zoning and Other Provisions

2.1 The subject lands are zoned Regeneration (RE) – to provide for enterprise and/or residential led regeneration under the Waterford City and County Development Plan 2022. Under this zoning objective, Residential Scheme is permitted in principle.

2.2 The site is part of a larger area identified as an Opportunity Site – OPS11. The vision for the lands is as follows:

- Development on this infill site should provide strong architectural design as a key landmark/gateway to Waterford City.
- Create a mixed use medium/high-density development on the site with an emphasis on apartments and residential living.
- Any development on the site must adhere to the specific objectives highlighted in Appendix 6 City South West Design Framework.
- Any development on the site must provide for adequate open space and facilitate the development of a walkway/cycle route and green infrastructure links connecting the SETU with Kilbarry Nature Park.
- Provide a strong architectural response and be designed to an exceptional standard with a desirable street edge addressing the Cork Road, Nature Park and the Kilbarry/Lacken.
- The site has the potential to accommodate taller building(s) and has a potential yield of c. 170 units.

3.0 Planning History

Application Reference: 24/60100: Permission granted on the 24th April 2024 for a Large Scale Residential Development comprising the construction of a student accommodation development consisting of 85 no. student accommodation apartments comprising a total of 582 no. bed spaces in 4 no. blocks ranging in height from 4-6 storeys, with student amenity facilities, storage, ESB substation/switch room, bin and general stores and plant rooms. Where relevant and brief.

Application Reference: 19517: permission granted 03.09.2019 to increase levels of filling (using clean inert soil and stones EU Waste Class 17 0504) from that originally granted under planning permission no. 18/726. An application to revise the existing waste disposal permit in place will be sought post planning

Application Reference: 18726: Permission granted 14.02.2019 to 1) construct a vehicular access to Ballybeg Drive and (2) raise existing levels of a derelict site using clean inert soil and stones (EU Waste Class 17 0504) for the purpose of future development of the site. An application for a waste disposal permit will be sought post planning.

4.0 Submissions by Prescribed Bodies – PA Stage

4.1 Submission by Uisce Eireann 18th May 2026.

- Water Networks: Confirm that a watermain exists on the public road in close proximity to the site. Available GIS data indicates that the watermain is accessible 10m from the land parcel via the Cork Road.

- Wastewater Networks: Confirm that a sewer exists on the public road in close proximity to the site. Available GIS indicates that the sewer is accessible approximately 70m from the site.

5.0 Determination by the Local Authority

Date of Determination: 29th June 2026

5.1 The local authority determined that:

It is considered that the land(s) DOES satisfy the qualifying criteria as per Section 653E(1)(a)(ii)(I) of the Finance Act 2021, as amended, for the reasons set out below, and therefore it is recommended that the land(s) at the above location should be included in the final map.

Reasons

1. The lands have been assessed in a manner consistent with 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.
2. The lands are zoned for regeneration 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.

5.2 The Council report regarding the request to rezone the subject lands and the request for the site to be removed from the map noted the following points:

- States that Uisce Eireann have confirmed that the land is serviceable.
- Permission has been granted for an LRD including 85 student accommodation apartments. The principle of development has been established by the grant of permission under PL.Ref.24/60100.
- Considers that the development objectives for the site can be achieved through the regeneration zoning.

- The zoning objective for the lands should remain, however, it is considered appropriate to amend the vision for the OPS11 through a variation to the Development Plan which will seek to confine uses on the site to uses that are ancillary to and support the existing and expanding SETU campus, as well as the enterprise and commercial activities on the former Waterford Crystal site (OPS12).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The grounds of appeal are summarised as follows:

- Notes and accepts that the request to Waterford City and County Council regarding the rezoning of the subject lands falls outside the Commission's remit.
- For land to qualify for RZLT, residential development has to be genuinely allowed. This parcel of land has planning permission (PL Ref.24/60100) for 85 student accommodation units, not houses or apartments. The Development Plan lists student accommodation as a separate category. The permission does not show that residential development is permitted.
- Under the Planning and Development Regulations 2001, student accommodation is classed in a similar manner to hostel or guest house, a different category from houses or apartments. The schemes dual use as short term accommodation outside term time, reinforces its commercial use.
- The Council's report states that it is planned to change the Development Plan vision for this parcel so that it only support SETU and the enterprise activity on the old Waterford Crystal site – not general housing.
- The wider vision for the undeveloped OPS11 lands was written before the subject site received its own permission for student accommodation.
- RZLT exists to bring forward land for housing, and the site already has planning permission. Requests that the determination be set aside.

7.0 Submissions by Prescribed Bodies – Appeal Stage

7.1 Submission by Uisce Eireann 27th August 2026. Confirm that the site in question is serviced for water and wastewater.

8.0 Assessment

Date of Assessment:

8.1 The date the land was first added to the RZLT map: Not stated. I confirm that the date of my assessment as to whether the lands are in scope is as of 1 January 2026.

8.2 The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Commission'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 Pleanála1 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".

Zoning:

8.3 The subject lands/site

a) is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

[1] Now An Coimisiún Pleanála

(ii) for a mixture of uses, including residential use,

8.4 The lands are zoned Regeneration (RE) – to provide for enterprise and/or residential led regeneration under the Waterford City and County Development Plan 2022. Under this zoning objective, Residential Scheme is permitted in principle. The lands are considered within scope of section 653B(a)(ii).

8.5 The appellant refers to the planning history of the lands and the extant permission for student accommodation rather than residential development.

8.6 I refer however to section 3.1.1 of the RZLT Guidelines which states:

"To satisfy the criteria as identified in section 653B, land must be zoned residential use or for mixed uses including residential within a Development Plan, Strategic Development Zone Planning Scheme or a Local Area Plan. This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed use zonings where residential developments are permitted in principle."

8.7 It is further detailed under section 3.1.2:

"*With reference to land that is included in a development plan or local area plan and is zoned for a mixture of uses, including residential such as TC-Town Centre, DC-District Centre, RE Regeneration, LC-Local Centre and RV-Rural Village, all land should be excluded from the map unless is it considered 'vacant or idle'. 'For clarity, lands on mixed use zonings only fall into scope where residential development is a 'permitted in principle' use in that zoning."*

8.8 I am satisfied that in terms of the criteria set out in the TCA, the subject lands are zoned for a mixture of uses and residential is a permissible use under this zoning. In this regard, the lands come within scope of section 653B(a)(ii).

8.9 Furthermore, I refer to section 3.2.3 of the RZLT Guidelines which states that *"Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions."*

8.10 In this context, the planning history of the land is not a relevant consideration in terms of the criteria set out under Section 653B. Notwithstanding this, I would highlight to the Commission that the definition of Large Scale Residential Development to which the extant permission (24/60100) relates is defined as: large-scale residential development' means a development that includes— (a) the development of 100 or more houses, (b) the development of student accommodation that includes 200 or more bed spaces, (c) both the development of 100 or more houses and of student accommodation, or (d) both the development of student accommodation that includes 200 or more bed spaces and of houses.

8.11 It is also noted that the appellant makes reference to the proposal of Waterford City Council to amend the development vision for the site. It should be noted that at this juncture, this variation has not been brought forward. Notwithstanding this, it should be noted that it is not the intent of the planning authority to amend the zoning of the subject site. It is to remain zoned RE where residential scheme is a permissible use.

Status of Lands:

653B(c)(ii) It is reasonable to consider that the land is vacant or idle

8.12 The subject lands are greenfield in character and remain undeveloped. In this regard they are vacant and idle.

Public Infrastructure and Facilities:

Provisions of 653(b)

8.13 It is reasonable to consider the lands may have access, or be connected to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development. The submission from UE confirms the site is serviceable and I am satisfied that connection to existing services is straightforward and there are no substantive capacity issues.

- Roads – YES – site has access to the Cork Road – R680.
- Footpaths – YES located along Cork Road – R680 and also Ballybeg Drive.
- Public Lighting – YES located along Cork Road – R680 and also Ballybeg Drive.
- Foul Sewer Drainage – YES confirmation from UE 27th August 2026.
- Water Supply - YES confirmation from UE 27th August 2026.

Physical Condition:

8.14 **653B(c):** It is reasonable to consider that lands are not affected, in terms of their 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.

Exclusions - 653B(c)(iii) to (v):

8.15 I am satisfied that none of the exclusions under 653B (c) (iii) to (v) are applicable to the subject lands.

(iii) that it is reasonable to consider is required for, or is integral to, occupation by:

(I) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare - No

(II) transport facilities and infrastructure - No

(III) energy infrastructure and facilities - No

(IV) telecommunications infrastructure and facilities - No

(V) water and wastewater infrastructure and facilities - No

(VI) waste management and disposal infrastructure - No

(VII) recreational infrastructure, including sports facilities and playgrounds - No

(iv) that is subject to a statutory designation that may preclude development - No

(v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990 – No.

Conclusion:

8.16 The subject lands are located within the urban area of Waterford City and are zoned for a Regeneration (RE) – to provide for enterprise and/or residential led regeneration under the Waterford City and County Development Plan 2022. The lands are serviced and have access from the Cork Road – R680. Notwithstanding the planning history of the lands and the contention of the appellant that residential development has to be genuinely allowed, I am satisfied that under the zoning residential is a permissible use and I consider that the lands remain within the scope of the RZLT map.

9.0 Recommendation

I consider that the lands identified as Parcel ID WDLA000199 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 subject lands from the final map.

10.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority 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 ID WDLA000199 are located on lands zoned Regeneration (RE) – to provide for enterprise and/or residential led regeneration

under the Waterford City and County Development Plan 2022 and are considered in scope of section 653B(a)(ii). Having regard to 653B(b), the lands are located within an established urban area with documentary evidence from UE that services are available, that connection is straightforward and that there is sufficient waste water capacity to serve the lands. 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. Having regard to 653B(c)(ii) it is reasonable to consider that the land is not vacant or idle.

Notwithstanding the planning history of the lands, I am satisfied that the lands are appropriately zoned and residential is a permissible use and, therefore, come within the scope of the 653B.

11.0 Recommended Draft Commission Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Waterford City and County Council

Local Authority Reference Number: WFS-C91-5

Land Parcel ID: WDLA000199

Appeal by Noel Frisby Construction Ltd. 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 29th day of June 2026 in respect of the site described below.

Lands at: Kilbarry, Cork Road, Waterford

Decision

The Commission 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 Commission confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID WDLA000199 on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority 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 ID WDLA000199 are located on lands zoned Regeneration (RE) – to provide for enterprise and/or residential led regeneration under the Waterford City and County Development Plan 2022 and are considered in scope of section 653B(a)(ii). Having regard to 653B(b), the lands are located within an established urban area with documentary evidence from UE that services are available, that connection is straightforward and that there is sufficient waste water capacity to serve the lands. 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. Having regard to 653B(c)(ii) it is reasonable to consider that the land is not vacant or idle.

Notwithstanding the planning history of the lands, I am satisfied that the lands are appropriately zoned and residential is a permissible use and, therefore, come within the scope of the 653B.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

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Erika Casey

Director of Planning

Date: 3rd November 2026