



An
Bord
Pleanála

Inspector's Report ABP-316382-23

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 Churchtown, Newcastle West, Co. Limerick.
Local Authority	Limerick City & County Council.
Planning Authority Reg. Ref.	LCC-C172-RZLT1-2.
Appellant(s)	John Kelly.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 are located at Churchtown in Newcastle West, Co. Limerick. The lands are in different ownership and the appellant has submitted a folio to illustrate the extent of his ownership.

The appeal before the Board relates only to the portion of lands in Mr Kelly's ownership.

2.0 Zoning and other provisions

Newcastle West Local Area Plan 2014-2020 (extend to April 2024) is the current operative Plan.

The lands are the subject land use zoning objective 'Residential Development Area Please 1'

New Residential Development Area: This zoning provides for new residential development and other services associated with residential development. While housing is the primary use in this zone, recreation, education, crèche/playschool, sheltered housing and small corner shops are also envisaged, subject to the preservation of residential amenity, traffic considerations and compliance with Section 5.5 in Chapter 5 of the Plan.

The Draft Newcastle West Local Area Plan 2023 was on display from the 6th May to 19th June 2023

3.0 Planning History

Reference to pre-application discussions. No reference to a planning application.

4.0 Submission to the Local Authority

The appellant made a submission to the local authority seeking to have his land removed from the draft map on the basis that the lands are not serviced. Prevented from access to foul sewer drainage, surface water drainage and second access to a public road by third party private owned lands.

5.0 Determination by the Local Authority

The local authority determined that:

1. The land in question is included in a local area plan and is zoned for residential development.
2. The land is serviced, or is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is a services capacity available sufficient to enable housing to be developed.
3. 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 archaeological or historic remains.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- Lands identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 are in different ownerships. The appellant has submitted a folio to illustrate the extent of his ownership. The appeal relates only to the portion of lands in Mr Kelly's ownership.
- The lands has a c.100m road frontage onto Churchtown Road with the remainder to the western boundary situated to the rear of 14 no, detached properties that front onto Churchtown Road. To the south it is bounded by a supermarket carpark and agricultural lands to the east and north (lands to north has a planning application P22/840 for 93 house on FI).
- Land appears flat but is not.
- Lands is currently used for agricultural purposes with haybarn and shed located on the northern boundary.

- Attempts to develop land would require wayleave.
- LAP identified issues with the foul sewerage network in the town.
- The land cannot be currently serviced and is not likely to be serviced in the future without access across third party property.
- There is no storm drainage system on Churchtown Road.
- Foul drainage system serving the Churchtown area is a combined sewer with limited capacity. Given the fall the land cannot be serviced by existing water services infrastructure on Churchtown Road. Only option to service land is via third party lands (FI for 2022 application refers to this).
- Having regard to the topography of the subject lands and its lack of existing or potential water services infrastructure, which is unable to facilitate residential development it is submitted to the Bord that the subject land fall out of scope as connections to services require access to third party lands and as such should be removed from map.

7.0 Assessment

The comments raised in the appeal are noted. The local authority outlined in its report why it has determined that the site is in scope for inclusion on the RZLT maps.

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 'Residential Development Area Please 1' are considered within scope of section 653B(a).

The appellant has submitted that the lands should be excluded as the current LAP has identified capacity issues in the Newcastle West WWTP is at capacity. I note the UE Wastewater Treatment Capacity Register published June 2023 has assigned a green status (spare capacity) to Newcastle West with WWTP planned/underway.

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. Correspondence on file from Uisce Eireann confirms there is a public sewer with capacity available on Churchtown Road adjoining the site. And that there is also a public sewer, with capacity available c. 140m to the east however this would require pipe laying over several land parcels. 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 Limerick 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 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 on Churchtown Road with capacity. 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, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

The appellant submitted that the lands should be excluded as in use for agricultural purposes. As noted in the 2022 Guidelines the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. Based on the information available I have no evidence that this is the case. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and therefore the appeal on these grounds should be dismissed.

The appellant has submitted that the topography of the land excludes it from RZLT. I note the level of the lands and this in principle does not preclude the lands from development as such are in scope.

Having regard to the foregoing I consider that the lands zoned residential identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

9.0 Conclusion & Recommendation

The portion of land identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly 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 lands identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 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 Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly on the map.

8.0 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 Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly 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. is portion of the lands identified as Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly 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 Land Parcel LKLA00012449 under LCC-C172-RZLT1-2 in the ownership of John Kelly 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

2nd August 2023