



An
Bord
Pleanála

Inspector's Report ABP-316389-23.

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 Lixnaw, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-36

Appellant

William Thomas Quilter

Inspector

Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-36 with a stated area of c.2.13 hectares are located in the village of Lixnaw, Co. Kerry.

2.0 Zoning

The Draft Listowel Municipal District Local Area Plan 2023-2029 pre-draft consultation finished on the 10th March 2023. This will replace the Listowel Town Plan which is stated to be contained in Volume 2 of the Kerry County Development Plan 2022-2028 and the Listowel Municipal District LAP 2020-2026.

Volume 1 of the Kerry County Development Plan 2022-2028 notes that in the future suite of Municipal District/ Electoral Area Local Area Plans all residential zoning will take a tiered approach and lands will be subject to a Settlement Capacity Audit.

The current operative plan for Lixnaw is the Listowel Municipal District LAP 2020-2028.

Lixnaw is identified as a village in the County Settlement Hierarchy.

The lands are zoned R4.6 Strategic Residential Reserve in the Listowel Municipal District Local Area Plan 2020-2026.

Two indicative access points to the appeal lands are shown on the Land Use Zoning map.

Section 2.2.3 Long Term Planning notes *“Lands will be zoned as R4 (Strategic Residential Reserve) which indicates future long-term use. The purpose of phasing is to allow for the orderly development of these settlements and to ensure that the physical and social infrastructure required is provided in tandem with the residential development.”*

Residential development on R4, Strategic residential reserve lands will be permitted only on completion of 80% of the R1 new/proposed residential zoned lands subject to the provision of adequate infrastructure. Where no lands have been identified as R1 in a particular settlement, residential development will only be considered on lands zoned M2, M4 or R4 for example subject to consideration of the provision of adequate public water infrastructure and need and demand in the area amongst other issues.

Objective LSR-03 states '*prohibit development on lands zoned as strategic residential reserve (R4) until 80% of all other residential zoned lands have been developed to the satisfaction of the planning authority*'.

3.0 Planning History

None stated.

4.0 Submission to the Local Authority

The appellant made a submission to the Local Authority seeking to his lands removed from the draft map on the basis the lands are zoned Strategic Residential Reserve which relates to land which are not suitable for housing at present as they cannot be serviced. It is also submitted that it is unclear how the site would connect to the integrated wetland serving the village, there is low demand for housing in the village and that a significant portion of the site is subject to flood risk. The submission also requests that the site be taken out of the settlement boundary and dezoned so that they revert to agriculture lands.

5.0 Determination by the Local Authority

The local authority determined that the site fulfils the qualifying criteria to be included in the Final Map for the Residential Zoned Land Tax or the following reason:

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 and 3) the land is not affected in terms of 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

The grounds of appeal are summarised as follows:

- The lands are zoned Strategic Residential Reserve which relates to future lands use on account of the site not being serviced.
- The site is not serviced and there are significant concerns that it could connect into the new Integrated Wetland in the village which deals with foul waste.
- A significant portion of the site is subject to fluvial and coastal risk flooding and further studies are required to determine the extent of same. Any planning application for housing would be premature pending the details of these future studies. The physical condition may impact ability to provide housing on the land due to flood risk. There is also flood risk associated with the sump and concrete pipe running through the southern portion of the site.
- There is no demand in the area for housing to release R4 lands and the number of unfinished housing development in the village highlighted.
- Development of the site would landlocked agricultural lands to the rear.

7.0 Local Authority Submission

- The appeal in relation to the inclusion of these lands on the rzlt draft map is noted.
- The Listowel Municipal District LAP was adopted in September 2020. At that point the construction of the new integrated wetlands in Lixnaw was not complete. The village therefore had an issue with wastewater treatment capacity when the lands were zoned. As set out in the LAP the lands have been zoned R4 in villages with these lands being centrally located and suitable for future residential use but adequate water infrastructure is not in

place to facilitate development at the time. The appeal quoted section 2.2.3 of the LAP [.....] with the construction of the wetland, and adequate wastewater treatment capacity now in place to serve the village, these lands are serviceable. Any reference in the LAP to wastewater treatment issues can be considered to be out of date as the issue has been addressed since the adoption of the LAP, residential development of these R4 lands would be in accordance with the provisions of the plan. The planning authority is therefore satisfied that the land in question is included in a LAP and is zoned for residential development.

- The Uisce Eireann Wastewater Treatment Capacity Register (June 2022) showed a PE of 1200 for the Lixnaw WWTP, a current load of 843 and headroom of 357. The report from UE on these lands confirms that the site can be serviced by water main and foul sewer.
- The site was examined for all forms of flooding, with the planner's report referencing CFRAMS. In relation to flooding, advice given to local authorities by the Dept. of Housing, Local Government and Heritage is that if lands meet the zoning and servicing criteria they should not be excluded on the basis of flood risk. The development management process will be used to determine the types of development suitable. The partial flood risk that this site is subject to can be taken into consideration in the layout of a development.
- The planning authority is satisfied that these lands have all services available, and that they should remain in-scope in terms of RZLT.

8.0 Assessment

The grounds of appeal raised issue with submissions made on the draft Listowel Municipal District LAP and I note that the local authority referenced the stated submission in their assessment. Submission pertaining to variations to land use zonings is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. 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. The Residential Zoned Land Tax-

Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states 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*”.

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 appeal lands are zoned R4 Strategic Residential Reserve. The text of Section 2.2.3 and Objective LSR-03 in the Listowel Municipal District LAP 2020-2026 (as set out in section 2 of this report) do not preclude residential development on Strategic Residential Reserve land within the lifetime of the plan. I am satisfied that the lands comply with section 653B(a) as I consider that the lands, zoned residential, may be available in principle for residential development during the lifetime of the current Local Area Plan if certain criteria are met and as are within scope and the grounds of appeal relating to this matter should be dismissed.

I note that Kerry County Council that there is capacity and that the lands are in scope.

The appellant requested that his site be removed from the map the lands are not serviced and significant concerns that it could connect into the new Integrated Wetland in the village which deals with foul waste.

Pg. 24 of the RZLT guidelines state:

If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.

The provision of infrastructure to the subject lands are considered to be in the control of Kerry County Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

Correspondence on file from Uisce Eireann confirms that a water main exists on public road in close proximity to the land parcel and that a sewer exists on the public road in proximity to the site. Both are accessible c.10m away along the public road fronting the site. No issues raised regarding capacity.

The planning authority have stated with the construction of the wetland, and adequate wastewater treatment capacity now in place to serve the village, these lands are serviceable and that residential development of these R4 lands would be in accordance with the provisions of the plan. I note the appellant raised concerns in relation to connecting to the integrated wetland, I have no evidence before me to suggest this is an issue. 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) and the grounds of appeal should be dismissed.

With regard to the provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it is 'reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting 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.

With respect to the submission that the land is subject to fluvial and coastal risk flooding and further studies are required to determine the extent of same. That the physical condition may impact ability to provide housing on the land due to flood risk. And that there is also flood risk associated with the sump and concrete pipe running through the southern portion of the site. The local authority in its assessment noted that the site, with the exception of the northwest corner is not at risk of flooding.

Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing including contamination and the presence of known archaeological or historic remains. Flood risk is not mentioned in this subsection. However it is not excluded either, and the use of the word “including” would indicate that relevant matters of the site’s physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. Based on the information available I have no evidence that this is the case and the grounds of appeal relating to this matter should be dismissed.

The appellant has also submitted that the development of the lands would render the agricultural lands to the rear land locked. Based on the information on file, in the submissions and grounds of appeal I have no evidence that this would be the case. Any development of the lands would be the subject of assessment by the relevant planning authority through the development management process. This is not a reason for exclusion from the RZLT maps and the grounds of appeal relating to this matter should be dismissed.

Overall 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)

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-36 meet the qualifying criteria set out in section 653B of the Taxes and consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

9.0 Conclusion & Recommendation

The lands identified as KE-C6-RZLT-36 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 and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. This lands identified as KE-C6-RZLT-36 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 KE-C6-RZLT-36 on the map.

10.0 Reasons and Considerations

The identified as KE-C6-RZLT-36 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 the report represents my profession 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.

Dáire McDevitt
Senior Planning Inspector
13th July 2023