



An
Bord
Pleanála

Inspector's Report

ABP-316483-23

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 Brodeen, Dundrum Road, Tipperary Town, Co. Tipperary.
Local Authority	Tipperary County Council.
Planning Authority Reg. Ref.	RZLT031.
Appellant(s)	Kingscroft Development Limited.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as Land Parcel ID TYLA0004210 under PA Ref. RZLT031 are located at Brodeen, Dundrum Road, Tipperary Town, Co. Tipperary. The lands are located on the eastern side of St. Michael's Avenue, south of its junction with Rosanna Road/Dundrum Road (R661).

2.0 Zoning and other provisions

The Tipperary County Development Plan 2022 to 2028 came into effect on 22/08/2022.

Section 4.2.1 states

'4.2.1 Town Plans:

The settlement strategy has identified 12 towns in Tipperary. Town Development Plans are currently in place for seven of these towns, with two towns subject to LAPs. As stated in the Core Strategy, the current Town Development Plans and LAPs will remain applicable until they are replaced with LAPs, in accordance with the framework and timeline as set out in Table 4.2.'

The Tipperary Town & Environs Development Plan 2013-2019 is one of several town development plans identified in Table 4.2 and is therefore still in effect.

The lands are zoned New Residential in the Tipperary Town & Environs Development Plan 2013.-2019.

3.0 Planning History

There is extensive planning history associated with the. ands

This includes inter alia:

PA Ref. 20/237(ABP Ref. 310314-21) which refers to a decision to refuse permission for a mixed use development.

PA Ref. 07/490 (ABP Ref. PL.23.225054) refers to modifications to 06/348.

PA Ref. 06/348 refers to a grant of permission for a residential development of 99 units and creche).

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 notwithstanding the planning history associated with the lands TCC refused permission which was upheld by ABP on appeal. The lands are currently affected/constrained by the proposed Urban Road 1 Corridor. The lands are not 'idle' and are the subject of ongoing and active planning progress which is seeking a grant of permission for development which includes residential uses.

5.0 Determination by the Local Authority

The local authority determined that:

- 1) It is reasonable to consider that the land has access, or be connected, to services and is therefore in-scope for the RZLT pursuant to Section 653B of the Finance Act 2021.

NOTE: Part of the Urban Link Road to connect the R661 to the N74, identified as part of the preferred transport solution under the N24 Cahir to Limerick Junction Road Project, is being delivered on adjacent land to the north in accordance with grant of planning permission ref. 201383. Any planning application on the submission site would be referred to the Mid-West National Roads Design Office to ensure that the road status of the link road is maintained.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The landholding is physically affected/constrained by the proposed Urban Link Road 1 Corridor, acknowledging the progression to Phase 3 design to design the Preferred Transport Solution associated with N24 Cahir to Limerick Junction Project in advance of finalisation of the Phase 2 Option Selection report.
- History of refusal of planning permission as recently as 2020 by TCC and ABP. It is submitted that the reasons cited could be interpreted as subjective and, in essence do not question the merits or principle of the residential development on the lands, which was and remains in line with the land use zoning designation applicable.
- Appellant is in the process of undertaking another planning application for the development of the lands in line with the R1 New Residential Development land use zoning as such lands are not idle.
- Given the constraint associated with the proposed Urban Link Road 1 Corridor, acknowledging the progression to Phase 3 design to design-the Preferred Transport Solution associated with N24 Cahir to Limerick Junction Project and such does not comply with the criteria for inclusion on the RZLT Map, specifically section 653(D)4(b) and (c) of the Taxes Consolidation Act 1997 (as amended)

7.0 Assessment

I note that the grounds of appeal submit that the lands do not comply with the criteria for inclusion on the RZLT Map, specifically section 653(D)4(b) and (c) of the Taxes Consolidation Act 1997 (as amended). Section 653D refers to submissions to the planning authority.

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 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 appeal lands are zoned residential and therefore within scope of section 653B(a).

The appellant has submitted that the lands are not 'idle' as they are the subject of active planning and should therefore be omitted from the map. The issue of vacant/idle arises for lands zoned for mixed use, the current appeal is on lands zoned residential.

The provision of infrastructure to the subject lands are considered to be in the control of Tipperary County Council or Uisce Eireann and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion 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 has submitted that the lands should be excluded as plans for the Urban Link Road are at advanced stage with published options showing the subject lands within an area identified for a future Urban Link Road as part of the N24 Cahir to Limerick Junction Project. The local authority in its assessment noted that a 100m corridor identified as part of the Preferred Transport Solution (January 2023).

The appellant has argued that any application for development on these lands is likely to be considered 'premature' pending the final determination of the Urban link Road which is supported by decision to refuse permission on the lands. I note that these decision predate the January 2023 Preferred Transport Solution that was published.

I have reviewed the Tipperary Town & Environs Plan 2013-2019 and note here is no indicative route shown on the current Tipperary Town Land Use Zoning Plan or The Specific Objective Map B which I acknowledge was adopted in 2013.

I have reviewed the Tipperary County Development Plan 2022-2028 and note Section 12.5.1 of the current Tipperary County Development Plan 2022-2028 refers to investment in strategic road infrastructure which clearly identifies the N24 upgrade project. Page 185-186 of the Plan states *"It is an objective of the Council to work with TII, and other relevant stakeholders in the region, to strengthen strategic inter-regional connectivity between Limerick and Waterford (N24 Cahir to Limerick Junction and N24 Waterford to Cahir), as part of an overall programme for the Limerick Waterford Transport and Economic Network identified in the RSES. As part of the feasibility and design phase for the project, the Council will ensure that the study area is maintained free from inappropriate development for the duration of the design phase. The study areas will be similarly protected, as appropriate, for the project planning phases, and through to construction and delivery."* This is reflected in Objective 12-B which states ' *work in partnership with TII... in particular to actively seek:b) The upgrade of the N24 National Route linking Limerick and Waterford (Major Roads Project).*

I draw the Board attention to page 10 of the Residential Zoned Land Tax-Guidelines for Planning Authorities 2022 relating to land required for infrastructure and community services states that *'where land is zoned for residential development and specific objective apply to provide such facilities but the extent of land required for such use is not identified, the land will fall within scope until such time as it is development and the relevant land will then fall out of scope.'*

The local authority in its Determination noted that "Part of the Urban Link Road to connect the R661 to the N74, identified as part of the preferred transport solution under the N24 Cahir to Limerick Junction Road Project, is being delivered on adjacent land to the north in accordance with grant of planning permission ref. 201383. Any planning application on the submission site would be referred to the Mid-West National Roads Design Office to ensure that the road status of the link road is maintained." Having regard to the foregoing I am of the view that the lands remain in scope and the grounds of appeal relating to this matter should be dismissed. Any development of the lands would have to have regard to any potential/proposed link road and would be assessed on its own merits through the development management process. Furthermore the presence of a proposed or indicative corridor for a road is not included in the criteria for exclusion under section 653B.

Having regard to the foregoing I consider that the lands zoned residential identified as Land Parcel ID TYLA0004210 under PA Ref. RZLT031 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.

9.0 Conclusion & Recommendation

The lands identified as Land Parcel ID TYLA0004210 under PA Ref. RZLT031 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.

The lands identified as Land Parcel ID TYLA0004210 under PA Ref. RZLT031 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 ID TYLA0004210 under PA Ref. RZLT031 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 lands identified as Land Parcel ID TYLA0004210 under PA Ref. RZLT031 should remain on the RZLT map.

The lands are zoned residential within an established urban area with services are 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. 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 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

1st August 2023