



An
Bord
Pleanála

Inspector's Report ABP-316839-23.

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 The Wood, Dingle, Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C6-RZLT-50
Appellant	Joan Murphy.
Inspector	Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-50 with a stated area of c.2.7 hectares are located at The Woods in Dingle, Co. Kerry.

There are concurrent RZLTs appeals by Eileen Moriarty (ABP 316918-23) for lands at Goat Street, Farranakilla , ABP 316830-23 by Johnathan Moriarty for lands at Farranakilla and ABP 316317-23 by John Moore for lands at High Street. All of which form part of a larger tract of land identified as a Masterplan site Corca Dhuibhne. Local Area Plan 2021-2027.

2.0 Zoning

Corca Dhuibhne. Local Area Plan 2021-2027 includes Dingle/Daingean Ui Chuis.

Dingle is a regional town in the Kerry settlement Hierarchy.

The lands are zoned R1 New Residential and along the road frontage G3 Landscape Protection. Residential is not a permitted use on lands zoned GRC (Green/Recreation/Conservation).

The lands form part of a large tract of land identified as a Masterplan site on the land Use zoning map.

Objective UD-08 *'prepare an overall Masterplan for the site [see zoning map] and adjacent area in order to ensure a coordinated and sustainable development of the area. The masterplan will be prepared prior to the consideration of development proposals.'*

3.0 Planning History

None stated.

4.0 Submission to the Local Authority

The appellants made a submission to the Local Authority seeking to have their lands removed from the draft map on the basis they are in dispute with KCC with regard to zoning and planning for this property and have been informed that it cannot be developed until a masterplan is put in place by the local authority. It is also submitted that the section of property that is zoned residential is not a practical size to develop housing due to the size of the green belt imposed.

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:

- Did not seek to have the lands zoned.
- Lands zoned Passive Open Space in the Dingle Functional Area Plan 2012-2018. The zoning status between 2018 and 2021 is unclear. The lands are zoned R1 New/Proposed Residential in the Corca Dhuibhne. Local Area Plan 2021-2027.
- D-UD-08 designation required a Masterplan to be prepared. Requirement for agreement by multiple landowners for a masterplan can lead to issues. The policy is unfair and unconstitutional.

- The landowner areas of the masterplan do not coincide with the landowners area for the RZLT map.
- The lands do not have reasonable access to services, sewerage in particular.

7.0 Local Authority Submission

Points of note include:

- Lands are zoned R1 (Proposed Residential).
- Lands to the south are zoned M1 (Mixed Use). RZLT does not apply to the M1 lands as residential is 'open for consideration' not 'permitted in principle'.
- The land adjoining a public road to the north.
- The planning authority is satisfied that these lands have all services available or are able to connect to services, and that therefore should remain in scope on terms of the RZLT.

8.0 Assessment

The grounds of appeal have included issues relating to zonings that are not within the remit of section 653B. 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 bulk of the appeal lands are zoned residential and therefore within scope of section 653B(a). The portion of the appeal lands located along the road frontage with High Street are the subject of 'green zoning' which appear to be G3 Landscape Protection. Residential development is not a permitted use on lands zoned GRC (Green/Recreation/Conservation). As such this portion of the land does not fall within the scope of section 653B(a) and should be excluded from the map.

The appellant requested that his site be removed from the map due to the absence of a Masterplan as is stated is required by Kerry County Council under objective Ud-08 before the lands in question can be developed. The lands are zoned R1 New/Proposed Residential under the current Corca Dhuibhne. Local Area Plan 2021-2027 as such comply with section 353B(a)(i). The requirement for a masterplan to be prepared is not included in the criteria for exclusion as set out under section 353B, as such I consider that the land complies with the criteria set out in section 353B of the Taxes Consolidation Act 1997, as amended (as introduced by the Finance Act 2021) and this ground of appeal dismissed.

Correspondence on file from Uisce Éireann confirms the site can be serviced. 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.

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. 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 zoned residential identified as KE-C6-RZLT-50 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 portion lands identified as KE-C6-RZLT-50 located along the road frontage with High Street are the subject of 'green zoning' under which residential development is not a permitted use on lands zoned GRC (Green/Recreation/Conservation). As such this portion of the land does not fall within the scope of section 653B(a) and should be excluded from the map. I recommend that the board cancel the determination of the local authority relating to this portion of the lands and direct the local authority to remove this portion of the lands identified as KE-C6-RZLT-50 from the map.

The remainder of the lands 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 portion of the lands identified as KE-C6-RZLT-50 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 relating to the remainder of the lands direct the local authority to retain the lands identified as KE-C6-RZLT-50 on the map.

10.0 Reasons and Considerations

The portion lands identified as KE-C6-RZLT-50 located along the road frontage with High Street are the subject of 'green zoning' under which residential development is not a permitted use such this portion of the land does not fall within the scope of section 653B(a) and should be excluded from the map.

The remainder of the lands identified as KE-C6-RZLT-50 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
11th July 2023