



An
Bord
Pleanála

Inspector's Report ABP-316845-23.

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 Ballinamore, Co. Leitrim.

Sligo

Leitrim County Council.

Local Authority Reg. Ref.

RZLT D19

Appellant

George Price.

Inspector

Dáire McDevitt

1.0 Site Description

The appeal lands identified as RZLT D19 are located at Willowfield Road, Ballinamore, Co. Leitrim.

2.0 Zoning

Notices on Leitrim County Council website note that the Leitrim County Development Plan 2015-2021 was extended by resolution to the 31st March 2023. The Leitrim County Development Plan 2015-2021 was the plan in effect during the RZLT submission period.

Leitrim County Development Plan 2023-2029 was adopted by the Elected Members of Leitrim County Council at a Special Planning Meeting on the 7th February 2023. The Plan came into effect 6 weeks from the date of adoption, on 21st March 2023. The Determination which is the subject of this appeal was made on the 27th March 2023.

Ballinamore is designated in the Leitrim County Development Plan 2023-2029 as a Tier 2A Self Sustaining Growth Town under the Leitrim County Settlement Hierarchy, with its function recognised as a 'self-sustaining' town with a moderate level of population, served by good transport links and playing an important role in supporting the social, economic and cultural life within its surrounding area and wider network of rural communities.

The lands which are the subject of this appeal are zoned 'New Residential' with stated objective '*to provide primarily for new residential development and community services at appropriate densities for the positioning of the centre in the Settlement Hierarchy and with an emphasis on quality of design.*'

3.0 Planning History

None stated.

4.0 Submission to the Local Authority

The appellant made a submission to the Local Authority seeking to have his lands removed from the draft map on the basis that the lands are used for agriculture and that the lands form the curtilage of a private residence.

5.0 Determination by the Local Authority

The local authority determined having regard to a) part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and b) section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities (2022) concluded that a) In accordance with the criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities (2022) the lands now zoned as New Residential will be included in the final map published on 01 December 2023.

(Note; While residential properties, the associated curtilage of which exceed 0.4047 hectares/1 acres are also not liable for the tax with respect to section 653O(2) of the legislation, owners of such properties must register for the RZLT and provide certain information to the Revenue Commissioners).

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- Lands contain dwelling house, farmyard, farm buildings and outhouses.
- Land is used for agricultural purposes.
- Zoning of the lands will cause financial hardship.
- Zoning of the lands will interfere with property rights and right to earn a living.

7.0 Assessment

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 raised issue with the residential zoning attached to the lands. Requests for changes to zoning are not within the remit of this report.

The appeal lands are zoned 'Residential Uses' and includes dwellinghouse, farm buildings, outhouses etc thus it is submitted by the appellant is exempt from RZLT.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets out that '*a number of exemptions are also set out within the provision, and while existing permanently -occupied residential dwellings will be indicated on the maps where located within a residential zoning, homes are not within the scope of the taxa and the owners of such properties will not be liable for this tax.*'

Section 3.1.1 of the guidelines includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that "*Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however home owners of residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation).*"

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 legislation does not give the board a role in determining whether a site is a 'relevant site' by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. 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 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"*.

Whether the site complies section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

With regard to the use of the lands for agricultural purposes. As noted in the 2022 RZLT 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).

Conclusion

The site is located on lands zoned for residential uses. Having reviewed the documentation on file, submissions and grounds of appeal I consider that the lands identified as RZLT 19 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.

8.0 Recommendation

I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as RZLT 19 on the map.

9.0 Reasons and Considerations

The lands identified as RZLT 19 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.

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

26th June 2023