



An
Bord
Pleanála

Inspector's Report ABP-316849-23.

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 Fohera, Ballinamore, Co. Leitrim.
Sligo	Leitrim County Council.
Local Authority Reg. Ref.	RZLT D8
Appellant	Francis Maguire.
Inspector	Dáire McDevitt

1.0 Site Description

The appeal lands identified as RZLT D8 are located at Fohera, 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 not fully serviced.

5.0 Determination by the Local Authority

I draw the Board's attention to the fact that the original plot of land identified under RZLT D12 referred to a larger plot of land in the appellant's ownership, part of which was removed from the RZLT map by the local authority as set out in the determination summarised below.

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) The lands zoned as Existing Residential in the Leitrim County Development Plan 2023-2029 do not fulfil the qualifying 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) for inclusion on the RZLT map for the following reasons i) The land is serviced, or it 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 and water supply necessary for dwellings to be developed and for which there is service capacity sufficient to enable housing to be developed. Accordingly, these lands will be included in the final map published on 01 December 2023 and will be in the scope of the Residential Zoned Land Tax. b) The lands zoned as Agriculture the Leitrim County Development Plan 2023-2029 do not fulfil the qualifying 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) for inclusion on the RZLT map and will be excluded from the final map published on 01 December 2023.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- Land is used for agricultural purposes.
- Zoning of the lands is unjust and unjustifiable and does not take into account the appellant's constitutional rights.
- No consideration or due consideration to EU Law and Instruments in relation to proper studies of an environmental nature and content.
- Designation is premature, unlawful and illegal.
- No oral hearing has taken place, or facility provided.
- No evidence from Leitrim County Council to show there is a demand for housing in Ballinamore or surrounding area and there are sufficient lands available to facilitate a demand.
- The town of Ballinamore is not congested nor is there a shortage of housing accommodation.
- Decision is unconstitutional
- Proposed zoning is not a guarantee of any immediate benefit to landowner.
- The land is not serviced nor is it reasonable for the Council to assume it has access to services which do not exist.
- County Council have produced no evidence to substantiate statement.
- Services are insufficient in their present states to justify re-zoning.
- Lands are liable to flooding
- Unfair tax liability.

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. Request for changes to zoning are not within the remit of this report.

The grounds of appeal have raised numerous issues that are not 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 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).

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 Leitrim 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.

There is correspondence on file from Uisce Eireann. The correspondence includes maps for the appeal site and refers to same as site(a) Oughteragh Road and states that available GIS indicated that the watermain is accessible within the site, parallel to Oughteragh Road. The site layout would have to take account of the proximity of the water main and associated wayleave. UE also confirm that a sewer existing on the public road in close proximity to the site. Available GIS indicates that the sewer is accessible in the Oughteragh Road adjoining the land parcel.

The appellant raised issues relating to capacity. Based on the information available I have no evidence that this is the case. I am of the view that 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)

With respect to the submission by the appellant that the land is subject to flooding The local authority in its assessment did not provide a comment in relation to the issue 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 sub-section. 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.

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 D8 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 D8 on the map.

9.0 Reasons and Considerations

The lands identified as RZLT D8 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