



An
Bord
Pleanála

Inspector's Report ABP-316913-23.

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 Goat Street, Farranakilla, Dingle, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-22.

Appellant

Eileen Moriarty.

Inspector

Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-22 with a stated area of c.0.5 hectares are located north of Goat Street in the townland of Farranakilla in Dingle, Co. Kerry. There are concurrent RZLTs appeals by Eileen Moriarty (ABP 316918-23) for lands at Goat Street, Farranakilla and ABP 316830-23 by Johnathan Moriarty for lands at Farranakilla,.

Documentation on file refers to Farranakilla and Farranflaherty.

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/Proposed Residential.

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 her lands removed from the draft map on the basis that she has engaged in pre-planning discussions for the development of these lands. Unsolicited letter also refers to the lands being used for farming.

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 for 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 actively farmed. The main access to the farmlands is via the zoned lands. Therefore development of the zoned lands will restrict the farming potential and access to the remainder of the farmlands.
- The refusal letter from Kerry County Council was a standard letter which did not deal with the issues affecting these land.
- The tax is unconstitutional and should not be introduced.

7.0 Local Authority Submission

- All planning issues relating to the submission are dealt within the planner's report.
- The lands adjoining Goat Street (regarding connections)
- The content of the appeal does not raise any additional points that are required to be addressed by the planning authority.

8.0 Assessment

The grounds of appeal raised issue with the constitutionality of the RZLT, this 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 residential and therefore within scope of section 653B(a).

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).

With regard to the main access to the farmlands being through the lands zoned residential. And that the development of the zoned lands will restrict the farming potential and access to the remainder of the farmlands. This is not included in the criteria for exclusion set out in section 653B(c) and as such this ground of appeal dismissed.

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.

Whilst infrastructure elements may not be in place at present, these would be expected to be provided in conjunction with the development of a site, generally developer led. No capacity issues were identified. 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) and the grounds of appeal should be dismissed.

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-22 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 KE-C6-RZLT-22 are located within an 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.

I recommend that the board confirm the determination of the local authority as the lands identified as KE-C6-RZLT-22 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion from the map.

10.0 Reasons and Considerations

The identified as KE-C6-RZLT-22 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
10th July 2023