



An
Bord
Pleanála

Inspector's Report ABP-316918-23.

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-23
Appellant	Eileen Moriarty.
Inspector	Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-23 with a stated area of c.5.6 hectares are located south of Goat Street in the townland of Farranakilla in Dingle, Co. Kerry. There are concurrent RZLTs appeals under ABP 316830-23 by Johnathan Moriarty for lands at Farranakilla, ABP 316317-23 by John Moore for lands at High Street and Joan Murphy (ABP 316839-23) for lands at The Wood. All of which also form part of a larger tract of land identified as a Masterplan site Corca Dhuibhne. Local Area Plan 2021-2027.

There is a concurrent appeal by Eileen Moriarty under ABP 316913-23 for lands to the north of Goat Street.

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 indicative corridor of An Daingean Relief Road traverses the lands which are the subject of this appeal.

Indicative Pedestrian Access is also shown.

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 appellant made a submission to the local authority seeking to have her lands removed from the draft map on the basis that there is an access road proposed through the lands. And that the exact location and design of the road would need to be agreed before any proposals for development on the lands be submitted to the planning section of Kerry County Council. Seeks an exemption from the tax until all details in connection with the service road are agreed.

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:

- The Dingle Town Plan proposes a new access road through the lands (RZLT and Land Use Zoning Maps included). The exact location of the access road has not been agreed. The construction costs, width and services have not

been discussed or agreed and it is not possible to development these lands until agreed.

- The refusal letter from Kerry County Council was a standard letter which did not deal with the issues affecting these land.
- The lands are being actively farmed.
- 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 planning authority is satisfied that these lands have all services available or are able to connect to services, and that they therefore should remain in scope in terms of the RZLT.

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”.

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).

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 Goat 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.

With regard to the indicative corridor of An Daingean Relief Road through the lands in the Corca Dhuibhne. Local Area Plan 2021-2027. The design and location of which has not been formalized or agreed. The appellant has argued that in the absence of such an agreement it is not possible to develop these lands. The Dingle land use map shows an indicative corridor for An Daingean Relief Road through the site. This does not preclude residential development on the site. Any proposal would need to have regard to any indicative road corridor and incorporate proposals into a site layout. This matter would be the subject of relevant agreements and consents and assessed by the planning authority through the development management process. The presence of a proposed or indicative corridor for a road is not included in the criteria for exclusion under section 653B and therefore the lands remain in scope and the grounds of appeal relating to this matter should be dismissed.

Having regard to the foregoing I consider that the lands zoned residential identified as KE-C6-RZLT-23

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-23 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 under KE-C6-RZLT-23 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-23 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-23 on the map.

10.0 Reasons and Considerations

The portion lands identified as KE-C6-RZLT-23 located along the road frontage with Goat 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-23 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