



An
Bord
Pleanála

Inspector's Report ABP-316924-23.

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 Laharn, Killorglin, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-16

Appellant

Joseph Clifford.

Inspector

Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-16 with a stated area of c. 3.4 hectares are located at Laharn in Killorglin, Co. Kerry.

2.0 Zoning

The lands are not zoned in the current Kerry County Development Plan 2022-2028.

The lands were formerly the subject of two zonings ('Residential Existing' and 'Residential Proposed') in the Killorglin Functional Area Local Area Plan 2010-2016 which has expired. As such the site currently has no zoning. An indicative access route was also shown on the land use zoning map.

The Planning Authority in their Determination state "*the land in question is included in a local area plan and is zoned for residential development*"

Section 18(4)(a) of the Planning and Development Act 2000 states that '*A local area plan prepared under this section shall indicate the period for which the plan is to remain in force*'. There is no record on the Kerry County Council website that the LAP has been extended.

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 currently being farmed and there is a private residence on the lands and access from the road to the farmyard buildings.

5.0 Determination by the Local Authority

The local authority determined that the land should be included on the Final RZLT Map for the following reasons:

1. The land in question is included in a local area plan and is zoned for residential development, 2. the lands is serviced, or is reasonable to consider may have access to services, 3. the land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains and 4. as provided by the guidelines, existing permanently occupied residential dwellings are to be indicated on the maps were located in a residentially zoned area but such homes will not be in scope of the tax and owners of such properties will not be liable for this tax.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- The lands are in agricultural use.
- The farm provides fresh food for the local community.
- Unreasonable cost if he has to relocate this farmyard and farm buildings.
- The appellant has stated that the has never received an offer from a developer or KCC for the purposes of developing the site for a residential development.
- Appellants home is included in the lands for RZLT
- KCC own lands suitable for residential development in the town and there are unfinished developments.

7.0 Local Authority Submission

- All of the planning issues relating to the submission are dealt with in the planner's report.

- The content of the appeal does not raise any additional points that are required to be addressed by the planning authority.

8.0 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 not zoned under either the Kerry County Development Plan 2022-2028 or a Local Area Plan as required under section 653B(a) and therefore cannot be considered in scope for the RZLT.

I address the other matters raised in the grounds of appeal below, however, as set out above the subject site is not zoned for residential use and therefore cannot be considered in scope for the RZLT for that reason.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 (RZLT Guidelines) 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 tax 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). Notwithstanding, and as set out above, the site is not currently zoned under a Development Plan or Local Area Plan, and therefore is not in-scope for the RZLT.

9.0 Conclusion & Recommendation

The appeal lands are not zoned under either the Kerry County Development Plan 2022-2028 or a Local Area Plan as required under section 653B(a) and therefore cannot be considered in scope for the RZLT.

I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as KE-C6-RZLT-16 from the map.

10.0 Reasons and Considerations

Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B(a) of the Taxes Consolidation Act 1997, as amended, the lands identified as KE-C6-RZLT-16 are not zoned under a current Development Plan or Local Area Plan for the area, and as such cannot be considered in-scope for the RZLT.

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
17th July 2023