



An
Bord
Pleanála

Inspector's Report ABP-316982-23.

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 Map

Location

Lands at Cahir Hill, Mitchelstown, Co. Cork

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT- 475060265

Appellant

Darren Aherne

Inspector

Emma Nevin

1.0 Site Description

1.1. The site comprises a parcel of land located to the north of Kildorrey Road, to the west of George Street, and to the west of Mitchelstown town. The site is bound by a mix of uses, including residential. The has a stated area of 1.25ha.

2.0 Zoning

2.1. The site is zoned R2 'Existing Residential/Mixed Residential and Other Uses' under Volume 3 'North Cork' of the Cork County Development Plan, 2022-2028.

2.2. There is a Protected Structure on site RPS '01311 Ard na Greine', as per Table 2.1.1 Record of Protected Structures of the Cork County Development Plan, 2022 – 2028.

3.0 Planning History

3.1. None located.

4.0 Submission to the Local Authority

4.1. There are water and wastewater capacity issues in Mitchelstown.

4.2. There is restricted road access to the land.

4.3. The land is within the residential curtilage and local property tax is paid annually.

4.4. There is a Protected Structure RPS ID.01311 on site.

5.0 Determination by the Local Authority

5.1. A report was received form Uisce Eireann which confirms that:

- A watermain and sewer exists on the public road in close proximity to the site. GIS data indicates that the watermain is accessible 20 metres away, via the road in Linden Hill development, adjoining the eastern boundary of the land parcel. Alternatively, a watermain exists 10 metres away in the public road, N513, adjoining the western boundary of the site.
- A sewer exists on the public road in close proximity to the site. GIS data indicates that the sewer is accessible 10 metres away via the road in Linden

Hill development, adjoining the eastern boundary of the land parcel. Alternatively, a sewer exists 35 metres away in the public road, N513, adjoining the western boundary of the site.

- It should be noted that supply challenges currently exist in the Mitchelstown Water Resource Zone, and more specifically in the Mitchelstown North Water Supply Zone. Intermittently, the level of service from this supply is disrupted due to high turbidity levels. Upgrade works are ongoing to improve the level of service.

The latest wastewater treatment capacity register issued in 2022, indicates that limited spare capacity currently exists in the Mitchelstown Wastewater Treatment Plant.

- The WWTP is currently not compliant with its license limits but is capable of achieving at least urban wastewater treatment directive standards. Potential additional capacity is available, depending on any additional load, not resulting in a significant breach of the combined approach as set out in Regulation 43 the Wastewater Discharge (Authorisation) Regulations 2007.
- UE recently completed a capital maintenance works at Mitchelstown WWPT to bring the 4th trickling filter back into operation and increase the capacity of the plant from 5,600 PE to 7,400 PE in terms of achieving the UWWTD.

A longer- term upgrade will be required to achieve WWDA ELV compliance and may require a new discharge location.

- 5.2. Regard is had to the Residential Zoned Land Tax (RZLT) Guidelines for Planning Authorities June 2022 which sets out the following:

“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 owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation)”.

- 5.3. The Council considers that the existing residential properties are required to remain on the RZLT Map – notwithstanding whether or not an RZLT liability may arise.

5.4. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial Guidelines “Residential Zoned Land Tax – Guidelines for Planning Authorities’ for inclusion on the RZLT Map.

6.0 The Appeal

6.1. Grounds of Appeal

- Cork County Council’s Development Plan 2022 gives the zoning for this land parcel (Parcel ID: EX-RES-8898) as ‘Existing Residential/Mixed residential and Other Uses’.
- Taxes Consolidation Act, 1997, as amended, Section 653B(ii) exclusion states: but which is not land that is zoned for a mixed-use purpose (inclusion residential) unless it is reasonable to consider that such land is vacant or idle.
- Parcel ID: EX-RES-8898 zoning includes ‘Mixed Residential’ in Cork County Development Plan 2022 so exclusion 653B (ii) is applicable.
- Parcel ID: EX-RES-8898 is not vacant or idle as:
 - (i) It is the sole residence of the property owner and is continuously occupied by the property owner. Local Property Tax is paid annually for ‘Ard na Greine’.
 - (ii) The land is included in the appellants active herd number D3613560 and as such the lands are registered with the Department of Agriculture.
- Thus, exclusion Taxes Consolidation Act, 1997, as amended Section 653B (ii) should be invoked for Parcel ID: EX-RES-8898 as it is not vacant or idle and is zoned ‘Mixed Residential’ in Cork County Council’s Development Plan, 2022.

7.0 Assessment

7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including

residential. It is noted that the subject site is zoned “Existing Residential/Mixed Residential and Other Uses’ under Volume 3 ‘North Cork’ of the Cork County Development Plan 2022-2028. As such the site is zoned for residential use.

7.2. The appellant states in the grounds of appeal that the site is not vacant or idle and states that the zoning includes ‘Mixed Residential’ and as such Section 653B (ii) of the Taxes Consolidation Act, 1997, as amended is applicable.

7.3. I note that Section 653B of the Act states that *“In this Part, a reference to land which satisfies the relevant criteria is a reference to land that—*

(a) is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use, or

(ii) for a mixture of uses, including residential use,”

Section 653B c (ii) states *“(ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,”*

7.4. Section 3.1.2 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, describe permissible exclusions from the map, including where land located within mixed use zones, which permit a variety of uses including residential, should only be considered to be in scope for the tax where they are vacant or idle. The subject site is zoned for residential development including mixed residential and other uses, therefore the primary use on these lands is residential. As such Section 653B (ii) of the Taxes Consolidation Act, 1997, as amended, is not applicable to these residential zoned lands.

7.5. While the appellant states that there is an existing residential property on the lands, I refer to Section 3.1.1 Criteria for Inclusion within the Scope of the Tax Measure of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which states *“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 owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation)”*.

- 7.6. The reference to the active herd number and the fact that the lands are registered with the Department of Agriculture i.e. for agricultural use does not qualify for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.7. Having regard to the report from Uisce Eireann, I consider that there is viable water and wastewater connections available in proximity to the site. As such, the site is suitably serviced and are considered to be ‘connected’ or ‘able to connect’ as per Section 653B(b) of the Taxes Consolidation Act, 1997, as amended.
- 7.8. Notwithstanding the above, I note the protected structure on site, RPS ‘01311’ ‘Ard na Greine’, which is included in Table 2.1.1 Record of Protected Structures of the Cork County Development Plan, 2022 – 2028. The central position of the protected structure on site should also be noted.
- 7.9. Therefore, I refer to Section 653B (c) (iv) of the Taxes Consolidation Act, 1997, as amended, which states that;
- “(c) it is reasonable to consider 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 known archaeological or historic remains, but which is not land—*
- (iv) that is subject to a statutory designation that may preclude development,”*
- 7.10. Having regard to the statutory designation of the existing dwelling on site, the protected structure ‘Ard Na Greine’ (RPS. 01311), which may preclude development of the site for residential dwellings, as per Section 653B (c)(iv) of the Taxes Consolidation Act, 1997, as amended, the lands cannot be considered to be suitable for inclusion on the RZLT Map.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the Local Authority and that the lands identified as part of this appeal as DRZLT- 475060265 be removed from the map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that the lands are not considered to be vacant or idle, has an active herd number and is registered with the Department of Agriculture and the lands are zoned 'Mixed Residential' in the County Development Plan.

Having regard to the protected structure on site, RPS '01311 Ard na Greine', included in Table 2.1.1 Record of Protected Structures of the Cork County Development Plan, 2022 – 2028, there is a statutory designation on site. The lands as part of this appeal identified as DRZLT- 475060265 are, therefore, subject to a statutory designation as per Section 653B (c)(iv) of the Taxes Consolidation Act, 1997, as amended and should not be included on the relevant RZLT maps.

I confirm that the report represents my professional 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.

Emma Nevin
Planning Inspector

8th September 2023