



An
Bord
Pleanála

Inspector's Report ABP-318067-23

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	Mullaghduin, Monaghan, Co. Monaghan.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	DMS80.
Appellant(s)	Peter and Eileen Deery.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

The lands which are the subject of this appeal, identified as DMS80 (Land Parcel MNLA ER117) are located at Mullaghduin in Monaghan town. The parcel of land includes dwellings, access lane to dwelling and the SRR lands.

There are concurrent RZLT appeals by Peter and Eileen Deery under ABP 318067-23 and ABP 318066-23 for lands at Mullaghduin in Monaghan (parcel ID MNLA ER94 and Parcel ID MNLA MT5 respectively). The same grounds of appeal have been submitted for the three appeals.

2.0 Zoning and Other Provisions

The relevant plan is the Monaghan County Development Plan 2019-2025

Monaghan is a Tier 1 – Principal Town as per the Core Strategy.

The land is zoned ‘Existing Residential’.

A portion of the lands is zoned ‘Strategic Residential Reserve’.

Core Strategy Policy CSP 9 states:

‘To ensure that the amount of lands zoned for residential uses in the County is consistent with the requirements of the Core Strategy as set out in Table 2.4 and 2.5. Any land considered appropriate for zoning in excess of these requirements shall be included as Strategic Reserve for potential development beyond this plan period.’

The Strategic Residential Reserve zoning objective states the following:

‘To protect lands that are considered strategic in location for future residential development’.

Principal permitted use is residential. The comprehensive development of these lands will only be permitted in instances whereby 75% of the proposed residential lands have been developed. Any development which would prejudice the principle use of these lands for urban residential expansion in the future will be resisted.

Single houses for landowners or their immediate family members will be considered on these lands provided that they do not compromise the overall objective of comprehensively developing the lands for sustainable urban housing in the future.

Justification for a dwelling in this instance will have to be demonstrated by the applicant including documentation to show that the landholding has been in family ownership for at least 5 years. In such cases the applicant will be required to demonstrate by way of an overall plan for the development of the lands, how the proposed development would not adversely affect the comprehensive development of the lands in the future.'

3.0 Planning History

ABP 21/644 refers to a grant of permission for a single house.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their lands removed from the draft map on the basis that the lands are zoned Strategic Residential Reserve and planning permission has been granted for a house for a family member on the lands and the remainder of the lands is in agricultural use.

5.0 Determination by the Local Authority

The Local Authority determined that the site was in scope. The land is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, zoned solely or primarily for residential use. And it is reasonable to consider that the land may have access to, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Lands are used for agricultural purposes since purchased in 2016.
- Permission granted for a house for a family member on the lands.

- Lands (c.4.61ha) are zoned Strategic Residential Reserve and as such not available until Residential A and B are developed.
- Contrary to the appellant's constitutional rights.

6.2. Planning Authority Response

- No further comment.

7.0 Assessment

The comments raised in the appeal are noted and the report of the Planning Authority is noted.

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 lands are zoned 'Existing Residential' and within scope of section 653B(a)(i). A portion is zoned Strategic Residential Reserve. The Development plan sets out that *"Principal permitted use is residential. The comprehensive development of these lands will only be permitted in instances whereby 75% of the proposed residential lands have been developed. Any development which would prejudice the principle use of these lands for urban residential expansion in the future will be resisted. Single houses for landowners or their immediate family members will be considered on these lands provided that they do not compromise the overall objective of comprehensively developing the lands for sustainable urban housing in the future. Justification for a dwelling in this instance will have to be demonstrated by the applicant including documentation to show that the landholding has been in family ownership for at least 5 years. In such cases the applicant will be required to demonstrate by way of an overall plan for the development of the lands, how the proposed development would not adversely affect the comprehensive development of the lands in the future."* This restriction results in the land not being available for residential development that is not subject to significant restrictions, as such I do not consider that it was available for development for residential uses for the general public on the relevant date or at the

time the local authority made its Determination and as such should be excluded from the final RZLT Map on this basis. I am satisfied that the portion of the lands zoned Strategic Residential Reserve are not within scope of section 653B(a)(i) and therefore the appeal on these grounds should be upheld.

With regard to the portion of lands zoned 'Existing Residential' and the presence of existing properties.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 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).

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 grounds of appeal have not raised matters under section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The portion of land identified as DMS80 (Land Parcel MNLAER117) located on lands zoned Strategic Residential Reserve in the Monaghan County Development Plan 2019-2025 were not available for residential development on the relevant dates or at time the local authority made its Determination. This portion of the land is not in-scope of section 653B(a)(i) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021). I recommend that the board set aside the determination of the local authority and direct the local authority to omit the portion of land zoned Strategic Residential Reserve identified as DMS78 (Land Parcel MNLAER94) from the final map.

The remainder of the lands identified as DMS80 (Land Parcel MNLAER117) satisfy the criteria set out under section 653B of the Taxes Consolidation Act 1997 as amended. I recommend that the board confirm the determination of the local authority and direct the local authority to retain this portion of lands identified as DMS78 (Land Parcel MNLAER94) on the final map.

9.0 Reasons and Considerations

Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The portion of land identified as DMS80 (Land Parcel MNLAER117) located on lands zoned Strategic Residential Reserve in the Monaghan County Development Plan 2019-2025 were not available for residential development on the relevant dates or at time the local authority made its Determination. This portion of the land is not in-scope of section 653B(a)(i) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021).

The remainder of the lands identified as DMS80 (Land Parcel MNLAER117) satisfy the criteria set out under section 653B of the Taxes Consolidation Act 1997 as amended.

Dáire McDevitt
Senior Planning Inspector

3rd October 2023