



An
Bord
Pleanála

Inspector's Report ABP-320321-24

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 The Wood, Dingle, Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

KE-C18-RZLT-12

Appellant(s)

Brendan O'Connell

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The appeal lands, identified as part of Land Parcel ID KY0000000654 on the RZLT Final Map are located on the southern side of High Road in the townland of The Wood, Dingle, Co. Kerry.
- 1.2. There are concurrent RZLTs appeals under ABP-320312-24 by Jonathan Moriarty for lands at Farranakilla, and also under ABP-320321-24 by Brendan O'Connell for lands at The Wood. These appeals relate to lands which also form part of a larger tract of land identified as a Masterplan site in the Corca Dhuibhne Electoral Area Local Area Plan 2021-2027.

2.0 Zoning and Other Provisions

- 2.1. Dingle is a regional town in the Kerry settlement hierarchy.
- 2.2. The appeal site is zoned R1 'New / Proposed Residential' in the Corca Dhuibhne Electoral Area LAP 2021-2027. The R1 zoning objective states the following: 'To facilitate the development of residential units in accordance with the Core Strategy.'
- 2.3. Adjoining this land parcel to the north but outside of the land parcel as denoted in the final RZLT map is a strip of land along the public road, zoned G3 'Landscape Protection' where residential development is not permitted.
- 2.4. The indicative route / corridor of An Daingean Relief Road traverses lands further east of the appeal site.
- 2.5. The appeal lands and adjoining lands are subject to a Masterplan designation as indicated on the land-use zoning map. In this regard Objective D-UD-8 refers, as follows:

Objective D-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

RZLT Appeals

In 2023 there were a number of RZLT appeals made in respect of lands which form part of a larger tract of land identified as a Masterplan site at Corca Dhuibhne in the LAP as follows:

ABP-316317-23 / PA Reference KE-C6-RZLT-21 – Confirm the determination of the local authority in part and set aside the determination of the local authority and allow the appeal in part. A portion of the lands along the road frontage are subject to a ‘G3 Landscape Protection’ zoning under which residential development is not a permitted use; these lands were excluded from the RZLT map. The remaining lands met the qualifying criteria and there were no matters which warranted their exclusion from the map. Location: Lands at High Road, Dingle.

ABP-316830-23 / PA Reference KE-C6-RZLT-25 – Confirm the determination of the local authority to include lands at Farrannakilla, Dingle in the RZLT MAP.

ABP-316839-23 / PA Reference KE-C6-RZLT-50 – Confirm the determination of the local authority in part and set aside the determination of the local authority and allow the appeal in part. A portion of the lands along the road frontage are subject to a ‘G3 Landscape Protection’ zoning under which residential development is not a permitted use; these lands were excluded from the RZLT map. The remaining lands met the qualifying criteria and there were no matters which warranted their exclusion from the map. Location: Lands at The Wood, Dingle.

ABP-316918-23 / PA Reference KE-C6-RZLT-23 – Confirm the determination of the local authority in part and set aside the determination of the local authority and allow the appeal in part. A portion of the lands along the road frontage are subject to a ‘G3 Landscape Protection’ zoning under which residential development is not a permitted use; these lands were excluded from the RZLT map. The remaining lands met the

qualifying criteria and there were no matters which warranted their exclusion from the map. Lands at Goat Street (Farranakilla), Dingle.

No other relevant planning history pertains to the lands

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map on the basis that they do not meet the qualifying criteria for inclusion. Specifically, the submission considers the absence of a relief road which is detailed in the LAP constitutes a constraint to development on the lands as they do not have an appropriate access. Furthermore, the lack of a Masterplan for the subject lands as required by the LAP is an obstacle to delivery of housing on the lands. The foul sewer pipeline running under the public road is part of a private group scheme and as such there is a lack of access to a public sewer connection.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the site is in scope given that it meets the qualifying criteria for inclusion 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 land 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.

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The lands are subject to an objective in the LAP for a new relief road (An Daingean Relief Road) which is not delivered resulting in a significant constraint to the development of the lands. The appellant is not aware of any formal planning or tendering process having taken place which would facilitate its delivery. As such it is considered that the subject lands are not serviced and should be excluded from the final map.
- Sightline requirements for the subject lands are not available from the existing public road to the north of the lands without the agreement of neighbouring landowners to adjust their boundaries.
- The LAP has an objective to prepare a Masterplan for the lands and adjoining area. No Masterplan has been prepared and as such it is not possible to deliver residential development on the lands.
- The appellant is informed by Uisce Eireann that the foul sewer pipeline running under the public road is part of a private group scheme of which the appellant is not a member. Without access to this foul pipeline the appellant cannot develop their lands.

6.2. Planning Authority Response

- The objective in the LAP for preparation of a masterplan for the area may be complied with by a landowner or a combination of landowners as part of or in advance of a planning application on the lands.
- The local authority is satisfied that the lands have all services available or are able to connect to services and that they should remain in scope.

7.0 Assessment

- 7.1. Section 653B of the Taxes Consolidation Act, 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). The Planning Authority determined that the site remain on the RZLT map.

- 7.2. The indicative corridor of An Daingean Relief Road on the subject lands is set out in the Dingle / Corca Dhuibhne Local Area Plan 2021-2027, however its exact route and design specification are not finalised to date. The appellant considers there is a significant constraint on the subject lands being developed on account of the non-delivery of the relief road. This in my view does not preclude residential development on the lands. It is open to the landowner to propose development on the lands which would have regard to the indicative road corridor. Any such proposal would then be assessed by the planning authority through the Development Management process. The inclusion of an indicative corridor for a road is not incorporated in the criteria for exclusion under section 653B and therefore the lands should remain in scope.
- 7.3. The appellant considers that the lands should be removed from the final map due to the absence of a masterplan and that as such residential development cannot progress. I note the Local Authority has confirmed that the preparation of a masterplan for the area may be undertaken by the landowner or group of landowners as part of or in advance of a planning application on the lands. Notwithstanding, the requirement for a masterplan to be prepared is not included in the criteria for exclusion as set out under section 653B. Therefore I consider that the land complies with the criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and I consider this ground of appeal should be dismissed.
- 7.4. High Road is located immediately north of the appeal lands and has the benefit of public lighting and footpaths. Uisce Éireann has confirmed that there is a water main within the adjoining public road. Noting the appellant's contention that the nearby foul pipeline forms part of a private group scheme, Uisce Éireann's comments as detailed in the Local Authority assessment note that there is a sewer within the public road which is accessible via a sewer extension approximately 190 m from the subject site. Connections to such infrastructure would normally be addressed as part of the Development Management process.
- 7.5. Having regard to the foregoing I am of the view that the land satisfies criteria 653B (b) of the Taxes Consolidation Act 1997, as amended, and that it is serviced or has access to services necessary for dwellings to be developed and with sufficient

service capacity available for such development. As such the lands could have development potential.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I consider that the lands identified as part of Parcel ID KY0000000654 on the RZLT Final Map meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final map.

9.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as part of Parcel ID KY0000000654 on the RZLT Final Map zoned R1 - 'New / Proposed Residential' are considered to be within scope of Section 653B(a). The lands are located within an established urban area. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C18-RZLT-12

Appeal by Brendan O'Connell in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Kerry County Council on the 18th day of June 2024 in respect of the site described below.

Lands at: The Wood, Dingle, Co. Kerry

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as part of Parcel ID KY0000000654 on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as part of Parcel ID KY0000000654 are zoned 'R1 - New / Proposed Residential' and are considered to be in scope of section 653B(a). The lands are located within an established urban area. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

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.

John Duffy
Planning Inspector

6th September 2024