



An
Bord
Pleanála

Inspector's Report ABP-320397-24

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

Location

Rathealy, Fermoy, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

ADRZLT 600387463

Appellant(s)

Thomas Rice & John Rice

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject lands are located on the north-eastern side of the town of Fermoy in north County Cork. The subject lands partly adjoin the M8 Motorway along its eastern boundary and Pike Road, a local county road along part of its western boundary. There is an old disused landfill site located on the lands immediately north of the subject lands. The lands are stated to be currently in agricultural use. The subject lands are stated to comprise an area of 2.8 hectares and the parcel id number is FY-R-01.

2.0 Zoning and other provisions

- 2.1. The subject lands are located within the defined Development Boundary for Fermoy as set out within Volume 3 of the Cork County Development Plan 2022-2028. Fermoy is identified as a main town within the Fermoy Municipal District (MD) within the Settlement Strategy for the county.
- 2.2. The lands are zoned as Medium A density residential development and the option for provision of a primary school (1.6 hectares). The following is set out within the FY-R-01 objective: A tree buffer of 20 metres minimum should be provided along the eastern site boundary. A buffer of 50 metres from the northern boundary of the site is to be provided due to the presence of a legacy landfill. Proposals should include measures to guard against any adverse impact (including noise impact) from the adjoining M8 and make provision for possible lands required on this site for future road improvements, Existing habitats on site should also be protected/enhanced and incorporated into a new development, Consideration should also be given to the site's proximity to the River Blackwater and tributaries corridor local biodiversity area.

3.0 Planning History

There is a planning history associated within the western portion of the subject lands, those immediately adjoining Pike Road as follows:

Planning reference number 19/5624, In 2019 planning permission was granted by Cork County Council for the development of 45 dwellings on the western portion of the subject lands.

Planning reference number 22/4863, in 2022 planning permission was granted by Cork County Council for the development of 41 dwellings on the western portion of the subject lands. To date this permission has not been implemented. This planning permission will not expire until October 2027.

4.0 Submission to the Local Authority

4.1. The appellants made a submission to the Local Authority seeking to have their land removed from the RZLT map. He raises the following issues:

- The landowners note that the lands are zoned residential.
- The subject lands are being actively farmed at present and were farmed by their father prior to that.
- There are no services available on these lands.
- The lands are used for agricultural purposes, and it is not their intention to develop the lands for other purposes.
- Seeking confirmation that the subject lands are not liable to the RZLT.

Further information was submitted by the appellant to the local Authority in the form of a map identifying the subject lands along with their land parcel identification numbers and identification of the owners of the subject lands.

5.0 Determination by the Local Authority

The local authority determined to include the site on the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

The reason(s) set out by the Local Authority are as follows:

- 1-The subject site meets with criteria for inclusion on the Final Annual Map 2025 as set out in Section 653B of the Taxes Consolidation Act, 1997, as amended.

6.0 The Appeal

6.1. Grounds of Appeal

- The imposition of the RZLT should be set aside until the subject lands are rezoned for agricultural purposes.
- The adjoining farmlands, in the ownership of the appellants have already been dezoned for agricultural use with the full support of the appellants.
- The appellants work as full-time farmers and details of their herd numbers have been submitted.
- The local authority carried out a desk top study, rather than a full and proper physical survey of the subject lands in terms of determining access to the piped water services.
- It is not reasonable to consider that the subject lands have access to or can be connected to estate services or public infrastructure and facilities.
- It is reasonable to consider that the subject lands are affected by contamination arising from the presence of the historic Fermoy landfill facility on lands adjoining, and north of the subject lands.
- The existence of the adjoining landfill would preclude the safe development of housing development and a primary school on the subject lands.
- The implications include environmental risks, dangers of exposing and disturbing toxic wastes and materials, contamination of ground water and pollution of aquifers.
- The local authority has failed to properly evaluate the subject lands in accordance with the provisions of the Taxes Consolidation Act, 1997.
- The appellants were not served with an adequate map or a valid determination by the local authority in respect of the RZLT.
- The notice was only issued to one of the appellants, and not both.
- The Local Authority's' determination is flawed as they were not in full possession of the facts in relation to adequacy of services or infrastructure,

the absence of connectivity via public footpath and possible contamination from the historic town landfill on the adjoining lands.

- Nowhere in the Council's determination is there evidence that they evaluated or considered the reasonableness or practicality of carrying out a development on the subject lands.
- The local authority has failed to acknowledge that upgrade works are required to the Fermoy WWTP.
- No correspondence from Uisce Eireann (UE) has been submitted in relation to the adequacy, or not, of the piped water services.
- The local authority has failed to name John Rice in their evaluation and notification of determination, one of the joint owners and occupiers of the subject lands.

7.0 Local Authority Response to appeal submission.

7.1 The local Authority issued a response to the grounds of appeal issued by Mr. Rice. The LA set out the following:

- The appellants did not request a change of zoning on the subject lands.
- The appellants' lands have access to the public road, through their wider land holding, including lands to the north of the subject lands.
- The Pike landfill (immediately north of the subject lands) is registered by the Environment Section within Cork County Council and identified as a closed landfill, and its risk rating is categorised as being low.
- The local authority sought further information from the appellants in the form of a map identifying the subject lands and details of land ownership.

- The local authority became aware that there were two landowners of the subject lands following confirmation by the landowners in correspondence dated the 10th day of May 2024.
- There is no requirement for the local authority to supply an ordnance survey map as part of its determination as set out within Section 653E (5) of the Taxes Consolidation Act 1997, as amended.
- Cork County Council complied with all its obligations under the RZLT legislative framework.
- Uisce Eireann have confirmed the availability of water and wastewater services in proximity to the subject lands.
- Cork County Council issued a notification of determination to the landowners/submitters as required under the RZLT legislation in addition to a copy of the local authority RZLT assessment report.

8.0 **Assessment**

- 8.1. In terms of the adequacy of the assessment carried out by the Local Authority (LA), I note that the LA carried out an assessment, requested additional information from the appellants in terms of a map clearly identifying the subject lands along with identifying parcel id numbers. One of the appellants, Thomas Rice was informed of the determination made by the local authority by correspondence dated the 26th day of June 2024. The local authority carried out an assessment and issued a notification of determination in accordance with the criteria as set out within Section 653 of the Taxes Consolidation Act, 1997, as amended.
- 8.2. In terms of the ownership of the lands, I note that Thomas Rice confirmed in correspondence to the LA on the 10th day of May 2024, that himself and John Rice are in ownership of the entire parcel of the FY-R-01 lands, which includes frontage onto the Pike Road. However, I note that as part of the appeal submission that the western portion of the FY-R-01 lands have been in the ownership of the Fermoy Residential Developments Ltd. since the 27th day of January 2023.

- 8.3. The determination which is the subject of this appeal was served on Thomas Rice, notwithstanding correspondence on file which identified that the lands in question are in the joint ownership of Thomas and John Rice. Under the provisions of the with Taxes Consolidation Act 1997, as amended, a landowner can appeal an RZLT determination. In this instance, I note that the appeal was submitted by Thomas and John Rice and is, therefore, considered to constitute a valid appeal. I also note that the initial submission to the Local Authority, dated the 27th of March 2024 was made in the name of Thomas Rice only (no map was included with that submission).
- 8.4. The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, 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. 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 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.”*
- 8.5. The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned Medium A-Residential in the current Cork Development Plan 2022-2028. The Local Authority determined that the lands are in scope and that they remain on the RZLT map. The local authority set out that the site is within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 8.6. The appellant sets out that the lands are part of an active farm and are integral to the operation and success of the family farm. They wish for the lands to remain in agricultural use and not be identified for future residential development.

- 8.7. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned ‘(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use’ but not land ‘(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.’ The land is zoned for residential use, and not for mixed use, and, therefore, the exemption under part (c)(ii) does not apply.
- 8.8. The fact that the lands are in active and established agricultural use does not qualify as a reason for excluding the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended. nor does the question of viability as a consequence of the application of the RZLT to the lands.
- 8.9. With respect to wastewater and water connections, the local authority set out within their RZLT assessment that there is capacity available within the water and wastewater networks. Uisce Eireann (UE) have confirmed in correspondence to the local authority that a watermain exists within 7 metres of the subject lands along Pike Roda and a foul sewer s accessible within 5 metres on the adjoining Pike Road. I have consulted with the Uisce Eireann (UE), capacity register dated June 2023, and it sets out that the status of the wastewater infrastructure is green and, therefore, capacity is available. Therefore, I am satisfied that it is reasonable that the lands could connect the piped wastewater services and that capacity is available, contrary to the assertion of the appellants within the report submitted by their Consultant Engineer (see Appendix 6 of their appeal submission). In terms of watermain supply, the capacity register sets out that there is potential capacity available, but that LoS improvement is required. I am satisfied, based on the information provided by the local authority, and based on the information available within the UE capacity register, that connection to the piped services can be achieved to service the lands. Such connections would be reasonably included as part of any development proposition for the site.
- 8.10. With respect to pedestrian infrastructure, the western portion of the subject lands front onto Pike Road, where the local authority state that there are public footpaths and public lighting available, and which provides connectivity between the subject lands and the town of Fermoy. Although, conflicting information has been submitted in relation to the ownership of the westerly portion of the FY-R-01 lands, I note from

the mapping submitted by the appellants as part of their appeal submission that there is access to the Pike Road further north-west of the FY-R-01 lands through adjoining lands, in the ownership of the appellants. Therefore, it is reasonable to consider that the subject lands have access to a footpath and streetlighting in proximity to the subject lands and that connectivity to same from the subject land is easily achievable.

- 8.11. In terms of the ownership of the lands, I note that Thomas Rice confirmed in correspondence to the LA on the 10th day of May 2024, that himself and John Rice are in ownership of the entire parcel of the FY-R-01 lands, which includes frontage onto the Pike Road, immediately west of the subject lands. Therefore, I am satisfied that the subject lands are not land locked.
- 8.12. The zoning of the subject lands at present is for Medium A density residential development as set out within the current Cork County Development Plan. The issue of rezoning of the lands is not a matter for consideration under Section 653B of the Taxes Consolidation Act, 1997, as amended. In this regard,
- 8.13. The existence of the landfill outside of the subject lands, on adjoining lands to the north, is not a matter for consideration under Section 653B (c) of the Taxes Consolidation Act, 1997, as amended. The appellants raised the issue of contamination of lands arising from proximity to the former town landfill site. The appeal submission sets out that the lands are being actively farmed for the rearing of cattle and, therefore, not likely to be contaminated. I am satisfied that this is not a reason for the exclusion of the lands from the RZLT map in accordance with Section 653 B (c) of the Taxes Consolidation Act 1997, as amended.
- 8.14. Therefore, in my opinion, the subject lands should be considered in-scope.

9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the local authority served on Thomas Rice and direct the local authority to include the site on the map.

10.0 Reasons and Considerations

10.1. The lands identified as ADRZL.T 600387463 , parcel ID number FY-R-01 are located on Medium A density residential zoned lands identified within the current Cork County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997. as amended. I acknowledge that the lands form part of an active farm, however the lands are zoned for residential purposes and agricultural activities are not liable to commercial rates. The existence of a historic landfill on adjoining lands is not a matter for consideration under Section 653B (c) of the Taxes Consolidation Act, 1997, as amended. The lands are located within an established urban area with services available, and no capacity or access 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. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Cork County Council

Local Authority Reference Number: ADRZLT 600387463

Appeal Thomas & John Rice in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the final Residential Zoned Land Tax Map by Cork County Council on the 14th day of June 2024 in respect of the site described below.

Lands at: Rathealy, Fermoy, County Cork.

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 confirms the determination of the local authority served on Thomas Rice and direct the Local Authority to retain the lands identified as Parcel ID number FY-R-01 and Local Authority reference number ADZLT. T600387463 should remain on the RZLT map.

Reasons and Considerations

The lands identified as ADZLT 600387463 , parcel ID number FY-R-01 are located on Medium A density residential zoned lands identified within the current Cork County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. I acknowledge that the lands form part of an active farm, however the lands are zoned for residential purposes and agricultural activities are not liable to commercial rates. The existence of a historic landfill on adjoining lands is not a matter for consideration under Section 653B (c) of the Taxes Consolidation Act, 1997, as amended. The lands are located within an established urban area with services available, and no capacity or access 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. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

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.

Fergal Ó Bric
Planning Inspectorate

10th day of October 2024