



An
Bord
Pleanála

Inspector's Report ABP-320406-24

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 Clareview House,
Clonmacken Road, Caherdavin,
Limerick

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

LCC-C293-RZLT5-4

Appellant(s)

Mary Hannon

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The appeal lands are located on the eastern side of the Clonmacken road in Limerick city. The appeal lands comprise two adjoining land parcels on the final RZLT Map. Parcel ID LKLA00002659 relates to the larger land parcel which is presently in agricultural use. Adjoining that land parcel to the southwest is the second smaller land parcel, Parcel ID LKLA00002215 which contains a farmhouse (Clareview House) and ancillary buildings.

2.0 Zoning and Other Provisions

- 2.1. Parcel ID LKLA00002659 is zoned 'New Residential' in the Limerick City and County Development Plan 2022-2028. Parcel ID LKLA00002215 is zoned 'Existing Residential.'

3.0 Planning History

None.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have the lands removed from the final RZLT map on the following basis:
- The land does not have access to essential public infrastructure and therefore, it does not meet the criteria for inclusion on the map.
 - Specifically, the public road is in disrepair, there is no footpath and there is insufficient public lighting.
 - In terms of water services there is no foul sewer or surface water drainage on the public road with water logging evident. There is insufficient water service capacity to support residential development. Having regard to these issues the lands are considered out of scope for RZLT.
 - The lands are rented for agricultural purposes.

5.0 Determination by the Local Authority

5.1 The Local Authority determined that the lands satisfy the relevant criteria as set out in section 653B for the following reasons:

- In accordance with Section 653B(b)(i), the land is included in the Limerick Development Plan 2022-2028 and is zoned for 'New Residential.'
- In accordance with Section 653B(c), it is reasonable to consider that the lands have access, or can be connected, to public infrastructure and facilities including roads, footpaths, public lighting, water supply, foul sewer drainage and surface water drainage and for which there is capacity available, sufficiently to enable housing to be developed.
- In accordance with Section 653B(b)(d), it is reasonable to consider 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 known archaeological or historic remains.

6.0 The Appeal

6.1 Grounds of Appeal

The following points are made in support of the appeal:

- The residence and farmyard encompassing an area of 0.27 hectares are eligible for exemption from the RZLT.
- The primary use of the landholding is agriculture. The land has been actively farmed by the appellant's family since the mid-19th century and it is presently leased for such purposes. The land is not vacant or idle. It is integral to the operation of a trade or profession; it is not unauthorised and should not be included in the map.
- A significant proportion of the land is designated as Coastal Flood Zone A with a high risk of flooding. The zoned lands are encircled by Flood Zone A.
- The steep gradient of the western part of the lands complicates construction and heightens erosion risk during heavy rains, threatening structural stability.
- The zoned land is classified as a Tier 2 site in the Limerick Development Plan 2022-2028 and they are not sufficiently serviced to support new development but

have potential to become so within the lifetime of the plan. The site is identified as Site 2 in Table 1 of the Development Plan (Volume 2a) indicating it is not currently serviced for development.

- It is necessary to widen the Old Clonmacken Road in order to service the lands and to accommodate footpaths. This poses significant challenges for a private developer and is dependent on property owners agreeing to sell the frontage of their properties to facilitate road widening.
- A portion of the widened roadway would traverse the subject lands which are designated Flood Zone A.
- Given the topography of the lands there are several challenges associated with connecting to the sewer which runs along the eastern site boundary. The sewer would traverse lands within Flood Zone A. Altering the topography to accommodate a sewer connection could disrupt natural drainage patterns, exacerbating flood risks; engineering solutions would be required to alleviate the risk. To facilitate the sewer, excavation and trenching are likely to be required which would disturb the farmland.
- In terms of drainage, the OPW has indicated that the zoned areas are not serviced. Connecting to the existing OPW arterial drainage channel along the eastern boundary is a suitable option but that would require a Section 50 application to the OPW. Direct drainage into the channel via SuDS measures is unlikely for land development.
- Given the current state of infrastructure and the challenges associated with servicing the land, it is deemed premature to include the subject lands on the RZLT MAP.

The following documents are appended to the appeal:

1. Determination Order issued by Limerick City and County Council & Report.
2. Map of the Residence and Farm Yard (Highlighted Green and Edged Red).
3. Pictures of existing roadway.
4. Flood Report Punch Engineers.
5. Letter from Uisce Eireann.

6. Email from OPW regarding zoning and drainage.
7. Two appeal decisions refusing permission relating to lands in the general vicinity of the appeal lands (ABP-313018-22 and ABP-312534-22 refer).
8. "Residential Zoned Land Tax - Your Questions Answered" Guidelines.
9. "Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022."
10. Limerick Development Plan 2022-2028 (Volume 2a).

7.0 **Assessment**

- 7.1 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".

- 7.2 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 subject lands zoned 'New Residential' and 'Existing Residential' are therefore within scope of section 653B(a)(i).
- 7.3 Land Parcel ID LKLA00002215

This parcel, measuring approximately 0.27 hectares and zoned 'Existing Residential,' contains a farmhouse and associated outbuildings which the appellant contends is exempt from RZLT. Page 8 (Section 3.1.1) of the RZLT Guidelines notes 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).'

Having regard to the foregoing it is considered that Land Parcel ID LKLA00002215 should remain on the map. While I note that owners of residential properties within housing estates or individual houses will not be liable for the tax, 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 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 Guidelines at section 3.3.2 which state 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 with section 653O or not, does not fall within the remit of this appeal. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

7.4 Parcel ID LKLA00002659

This parcel, measuring approximately 2.4 hectares and zoned 'New Residential,' comprises greenfield lands which the appellant contends is exempt from RZLT.

This land parcel is identified in Volume 2a of the Limerick City and County Development Plan 2022-2028 as Tier 2 lands (see Map 1: Limerick City and Suburbs

in Limerick, Mungret and Annacotty – Residential Settlement Capacity Map). Section 1.1 of Volume 2a defines Tier 2 lands as follows:

‘Tier 2: Serviceable Zoned Land - Lands that are not currently sufficiently serviced to support new development but have the potential to become fully serviced within the life of the plan.’ This section notes also that ‘Tier 2 designations highlight potential issues or constraints in infrastructure, which are required to be addressed prior to the development of lands.’ Table 1 of Volume 2a of the City and County Plan includes this land parcel (Site No. 2 on Table 1, corresponding to Map 1 above) and identifies that road widening is required and that the ‘Timeline / Cost’ is ‘developer led.’

I note that the Limerick City and County Development Plan 2022-2028 considers this land parcel to be ‘serviceable zoned land’ and as such, it is reasonable to consider the land, located within the ring road (R527), may have access to or be connected to public infrastructure and facilities, necessary for dwellings to be developed. Noting that developer-led road widening is required to facilitate development on the lands, I consider that these works would typically form part of the development management process and be included as part of a planning application relating to the lands.

The appellant raises concern that the road widening needed to service the lands would pose significant challenges for a private developer and would be dependent on the agreement of property owners on the western side of the Old Clonmacken Road to sell the frontage of their properties to facilitate these works. In my view, it would be possible to widen the road and provide footpath and public lighting infrastructure by utilising the lands on the eastern side of Old Clonmacken Road, which are in the appellant’s ownership.

In terms of water infrastructure, Uisce Éireann has confirmed that a water main exists on the public road in close proximity to the lands, while there are wastewater networks in the vicinity i.e. approximately 0.2 km to the south in the adjoining residential estate, or alternatively via the public road to the north, or at the eastern boundary of the overall landholding. In terms of surface water drainage there is an existing OPW arterial drainage channel along the eastern boundary of the landholding, which would require a Section 50 application to the OPW or alternatively there is also a surface drain located on the Jetland Shopping Centre Road to the north.

Having regard to the foregoing, I consider the lands comprising Parcel ID LKLA00002659 to be in scope on the basis that the criteria included in section 653B(b) are met. I am satisfied that it is reasonable to consider that the lands may have access to, or be connected to public infrastructure or facilities, including roads, 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.

- 7.5 The grounds of appeal raise issue with the imposition of the RZLT on Parcel ID LKLA00002659 which is used for agricultural purposes. As noted in the 2022 RZLT Guidelines, the use of lands for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. I am satisfied that the lands comprising Parcel ID LKLA00002659 do not meet the criteria for exclusion set out in section 653B(c)(i) on the basis that they are used for agricultural purposes.
- 7.6 Having regard to the agricultural use of Parcel ID LKLA00002659, the appellant considers the lands are not vacant or idle. I note that the issue of lands being vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, relates to lands zoned for a mixture of uses only, and therefore, this provision does not apply in this instance, given that the subject lands are zoned primarily for residential use.
- 7.7 Having regard to the submitted Draft Site Specific Flood Risk Assessment for the subject lands it is apparent that the Parcel IDs LKLA00002659 and LKLA00002215 are located within Flood Zone C, while the lands to the east on the wider landholding, which are not included on the RZLT map, are within Flood Zone A. Therefore, in my view there is no reason to exclude these aforementioned parcels from the RZLT map on the basis of flooding. The appeal submission also outlines potential challenges to developing the lands due to, inter alia, the topography of the lands. I consider that such matters would not be a physical impediment to the delivery of housing and they would normally be addressed as part of the development management process and are not for consideration as part of this appeal process. To conclude, in terms of section 653B (c), I do not consider the land parcel to be affected in terms of its physical condition by matters to a sufficient extent to preclude the provision of dwellings.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Parcel IDs LKLA00002215 and LKLA00002659 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

The lands identified as Parcel ID LKLA00002215 are zoned 'Existing Residential' and accommodate a farmhouse, yard, and other buildings. Land which is zoned residential and contains existing residential development such as estates or individual houses are considered 'in scope' from a zoning perspective and therefore must be included on the map. While noting that owners of residential properties within housing estates or individual houses will not be liable for RZLT, under section 653J the board's role in this 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 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. Having regard to the foregoing, it is appropriate that Parcel ID LKLA00002215 is retained on the map.

The lands identified as Parcel ID LKLA00002659 are located on lands zoned 'New Residential' and are designated as 'Tier 2:Serviceable Zoned Land' in the Limerick City and County Development Plan 2022-2028. The lands are located within an established urban area and have access to, or can be connected to surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. As such 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. Noting that developer-led

road widening is required to facilitate development on the lands, it is considered that such works would typically form part of the development management process. The lands are not affected in terms of their physical condition by matters to a sufficient extent to preclude the provision of dwellings and, therefore, an exemption pursuant to section 653B(c) does not apply to the lands. The use of the land for agricultural or horticultural purposes is not considered to be exempted from scope as they are not subject to rates and, as such, the lands do not meet the criteria for exclusion set out in section 653B(c)(i). The matter of lands being vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, relates to lands zoned for a mixture of uses only, which does not apply in this instance, given that the subject lands are zoned primarily for residential use.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Limerick City and County Council

Local Authority Reference Number: LCC-C293-RZLT5-4

Appeal by Mary Hannon 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 Limerick City and County Council on the 5th day of June 2024 in respect of the site described below.

Lands at: Clareview House, Clonmacken Road, Caherdavin, Limerick

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 Parcel IDs LKLA00002659 and LKLA00002215 on the final map.

Reasons and Considerations

The lands identified as Parcel ID LKLA00002215 are zoned 'Existing Residential' and accommodate a farmhouse, yard, and other buildings. Land which is zoned residential and contains existing residential development such as estates or individual houses are considered 'in scope' from a zoning perspective and therefore must be included on the map. While noting that owners of residential properties within housing estates or individual houses will not be liable for RZLT, under section 653J the board's role in this 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 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. Having regard to the foregoing, it is appropriate that Parcel ID LKLA00002215 is retained on the map.

The lands identified as Parcel ID LKLA00002659 are located on lands zoned 'New Residential' and are designated as 'Tier 2: Serviceable Zoned Land' in the Limerick City and County Development Plan 2022-2028. The lands are located within an established urban area and have access to, or can be connected to surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. As such 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. Noting that developer-led road widening is required to facilitate development on the lands, it is considered that such works would typically form part of the development management process. The lands are not affected in terms of their physical condition by matters to a sufficient extent to preclude the provision of dwellings and therefore, an exemption pursuant to section 653B(c) does not apply to the lands. The use of the land for agricultural or horticultural purposes is not considered to be exempted from scope as they are not subject to rates and, as such, the lands do not meet the criteria for exclusion set out in section 653B(c)(i). The matter of lands being vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, relates to

lands zoned for a mixture of uses only, which does not apply in this instance, given that the subject lands are zoned primarily for residential use.

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

23rd September 2024