



An
Bord
Pleanála

Inspector's Report ABP-320428-24

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

Mount Alto, Glanmire, Co. Cork

Land Parcel ID

CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

CRK-C272-RZLT2-5

Appellant(s)

Evelyn and Michael Kearney

Inspector

Paul O'Brien

1.0 Site Location and Description

- 1.1. The appeal lands, identified as Parcel IDs CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645 on the RZLT Final Map, are located to the north western side of Glanmire, Co. Cork, within the Cork City Council area. These land parcels make up a substantial area of land, approximately 6 hectares, with an irregular shape. The immediate adjoining area is characterized by residential development with agricultural uses found to the west of the subject site.

2.0 Zoning and Other Provisions

- 2.1. The appeal site is zoned ZO 01 – ‘Sustainable Residential Neighbourhoods’ with an objective ‘To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.’ The lands are not subject to Tier 1/ Tier 2 requirements as provided in the Core Strategy of the Cork City Development Plan 2022 – 2028.
- 2.2. The Cork City Development Plan 2022 – 2028 states the following in relation to ZO 01 lands, as relevant to this appeal:

‘ZO 1.1

The provision and protection of residential uses and residential amenity is a central objective of this zoning. This zone covers large areas of Cork City's built-up area, including inner-city and outer suburban neighbourhoods. While they are predominantly residential in character these areas are not homogenous in terms of land uses and include a mix of uses. The vision for sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents.

ZO 1.2

Development in this zone should generally respect the character and scale of the neighbourhood in which it is situated. Development that does not support the primary objective of this zone will be resisted.

ZO 1.3

Primary uses in this zone include residential uses, creches, schools, home-based economic activity, open space and places of public worship.

ZO 1.4

Uses that contribute to sustainable residential neighbourhoods are also acceptable in principle in this zone provided they do not detract from the primary objective of protecting residential amenity and do not conflict with other objectives of this Development Plan. Such uses include but are not limited to: small-scale local services including local convenience shops, community facilities; cultural facilities; hotels and hostels; live-work units; service stations (petrol filling stations); local medical services; third level education institutes; community based enterprise or social enterprises, health facilities including hospitals.

ZO 1.5

Where it can be suitable, the expansion of zoned Neighbourhood and Local Centres is open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 7 Economy and Employment.

ZO 1.6

The employment policies in Chapter Economy and Employment designate particular locations for offices, office-based industry and major retailing development, and these uses are not generally permitted in this zone, unless they are community-based enterprises or social enterprises.

ZO 1.7

Many green areas of open space in residential estates in Cork City are included in this zone. There will be a presumption against development on all open space in residential estates including any green area or public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation or amenity open space, including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes.'

3.0 Planning History

- ABP Ref. 316766-23 refers to an October 2023 decision to confirm the determination of the local authority for the inclusion of these lands on the RZLT Maps.

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 for the following reasons:

- The indicated lands are in use as part of their domestic property and as part of the adjacent farmyard.
- The farmyard includes screening to prevent nuisance to the house and other properties in the area.
- The current road access to these lands is restricted and there is no footpath in place to serve any future development in the area.
- Refers to the decision issued in relation to RZLT on these lands in 2023 – ABP Ref. 316766-23 refers.

5.0 Determination by the Local Authority

5.1. The Local Authority issued an order on the 27th of June 2024 stating the following:

‘A determination pursuant to Section 653E(1)(ii)(I) of the Finance Act 2021, as amended, for Submission Reference CRK-C272-RZLT2-5 to INCLUDE the above land on the Final Map of the Residential Zoned Land Tax as defined by 653K of the Finance Act 2021 for the reasons set out above is hereby made’.

5.2. Notice was issued on the 28th of June 2024 stating the following:

‘I refer to your submission in relation to the above. I wish to inform you that by Order dated 27th June, 2024 it was decided to include the above land from the final map of the Residential Zoned Land Tax for the following reason (s)

- The land is included in the Cork City Development Plan 2022-2028, in accordance with Section 10(2)(a) of the Act of 2000 and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- These lands satisfy section 653(b) of the Act, in that it is reasonable to consider that the land may have access, 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 with sufficient service capacity available for such development.'

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The indicated lands are in use as part of their domestic property and as part of the adjacent farmyard. Full details of the scale/ nature of the farm are provided in the appeal.
- The farmyard includes screening to prevent nuisance to the house and other properties in the area.
- The current road access to these lands is restricted and there is no footpath in place to serve any future development in the area. Development of these would be constrained by existing properties in this area.
- Refers to the decision issued in relation to RZLT on these lands in 2023 – ABP Ref. 316766-23. Consider that the lands are sufficiently serviced to enable development to take place here.
- There is no dispute about the provision of water services to enable the development of these lands.
- Other development in the area, with reference to Glen Richmond, would not be able to support additional development of the scale that these lands could provide.

- Refers to a decision to refuse permission for a SHD housing project under ABP Ref. 312222-21 in Glounthaune, which included inadequate infrastructure, site topography and inadequate local road capacity as reasons for refusal.

6.2. Planning Authority Response

No further comment made.

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 appeal lands are zoned for residential use and therefore within scope of section 653B(a). The Planning Authority determined that the site remain on the RZLT map.

- 7.3. The appellant has outlined why they consider that these lands should be omitted from the Final Map, they are partially in domestic and partially in use for farming purposes.
- 7.4. Lands can remain on the Final Map that are for domestic use, the appellant will not be required to pay the RZLT for lands that are subject to LPT. This is an issue that can be addressed through the Revenue Commissioners at a later stage.
- 7.5. I note the comments made regarding the agricultural use of part of these lands, however as referenced in the 2022 RZLT Guidelines, 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. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i). The lands are zoned for residential purposes and are within scope of Section 653B(a).
- 7.6. The provision of roads to service these lands would normally be addressed through the development management process. I would agree with the appellant that there is no footpath network in place and that the provision of such paths would require development over third-party lands. There are significant topographical issues in the area that would prevent the development of suitable footpaths unless significant engineering works were undertaken.
- 7.7. I am of the view that the land should be omitted from the final map as they can be considered to be exempt through Section 653B(b) in that it cannot be demonstrated that 'it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including' 'footpaths, public lighting'.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I consider that the lands identified as Parcel ID CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645 on the RZLT Final Map as they can be considered to be exempt through Section 653B(b) in that it cannot be demonstrated that 'it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including' 'footpaths, public lighting'.

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 Land Parcel ID CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645 on the RZLT Final Map are zoned ZO 01 – ‘Sustainable Residential Neighbourhoods’ and are considered to be outside the scope of Section 653B(a). The lands are recommended to be omitted as it cannot be demonstrated that ‘it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including’ ‘footpaths, public lighting’.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Cork City Council

Local Authority Reference Number: CRK-RZLT2-5

Appeal by Evelyn & Michael Kearney 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 Cork City Council on the 28th day of June 2024 in respect of the site described below.

Lands at: Mount Alto, Glanmire, Co. 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 set aside the determination of the Local Authority and allow the appeal in relation to the lands identified as Land Parcel ID CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645

Reasons and Considerations

The lands identified as Parcel ID CCLA00025489, CCLA00025503, CCLA00025520, CCLA00025629, CCLA00025630 and CCLA00025645 are zoned ZO 01 – ‘Sustainable Residential Neighbourhoods’ in the Cork City Development Plan 2022 - 2028 and are considered to be out of scope of section 653B. The lands are located within an established urban area, on zoned lands and part of the site is in domestic use. The lands shall be omitted as it cannot be demonstrated that ‘it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including’ ‘footpaths, public lighting’ considering the layout and topography of the lands here.

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.

Paul O’Brien

Inspectorate

26th September 2024