



An
Bord
Pleanála

Inspector's Report

ABP-320432-24

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

Hillview House, Richmond Hill,
Fermoy, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

ADRZLT 601526849

Appellant(s)

David & Kathleen Fenton

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject lands are located on the southern side of the town of Fermoy in north County Cork. Part of the eastern boundary of the subject lands adjoin the public road along Richmond Hill. The lands are stated to be currently in use as an equine facility for the breeding and training of horses. The subject lands are stated to comprise Hillview House and a number of out buildings to its rear and also a two-storey protected structure to the rear of Hillview House (RPS-ID-2199). The subject lands are stated to comprise an area of 3.12 hectares and the parcel id number is FY-ZLT-08.
- 1.2. There is a concurrent RZLT appeal reference number 320478-24 in relation to a land parcel immediately adjoining and south of the lands the subject of this appeal at Richmond Hill, Fermoy.

2.0 Zoning and other provisions

- 2.1. The subject lands are located within the designated settlement 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 for Existing Residential/Mixed Residential and Other Uses within the Plan.

3.0 Planning History

I am not aware of any planning history pertaining to the subject lands.

4.0 Submission to the Local Authority

- 4.1. The appellants made a submission to the Local Authority seeking to have their lands removed from the RZLT map. They raised the following issues:
 - The subject lands form part of a family run holding used for equine purposes and specifically for the breeding and training of horses.

- The lands are used for equine purposes, and it is not their intention to use/sell the lands for commercial or residential purposes.
- Seeking that the zoning of the lands be altered.

Further information was submitted by the appellants to the local Authority in the form of a screenshot of a map identifying the subject lands along with their land parcel identification numbers. They set out that equine uses are conducted on the lands, that they do not envisage their lands being used for any other purposes. They are seeking to have the zoning changed and the subject lands removed from the RZLT map.

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 subject lands are not zoned for any purpose within the current Cork County Development Plan.
- The lands cannot qualify for inclusion within the RZLT map if they are not zoned within the Development Plan.
- The lands form part of a registered stud farm and specialise in the breeding and training of horses. This is their sole trade and source of livelihood.
- The lands are tailor made for the equine services which they provide to the top racing trainers in the country.

- Access from the subject lands is onto Richmond Hill which is not safe or suitable for access to a residential development.
- The subject lands are only accessed via a shared access with an adjoining owner, along a right of way.
- The access point passes through their training yard which is in use every day associated with the equine business on site.

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 The lands identified for inclusion on the RZLT map are zoned for Existing Residential/Mixed residential and other uses 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.

7.3 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.

7.4 The appellant sets out that the lands form part of an active equine facility, specifically used for the breeding and training of horses. They state that their facilities are used by some of the top race trainers in the country. The appellants have not demonstrated, based on the information submitted, that the equine facility has the benefit of a planning permission, and is liable to commercial rates and, therefore, they have not demonstrated, based on the information submitted, that their equine facility falls within the exemptions provided for under Section 653B (c) (i) of the Taxes Consolidation Act 1997, as amended.

7.5 The fact that the lands are in active and established equine use does not qualify the lands for exclusion from the RZLT map under Section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.

7.6 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. 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. In terms of watermains 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 included as part of any development proposition for the site.

7.7 With respect to pedestrian infrastructure, the north-western portion of the subject lands front onto Richmond Hill, where there a public footpath along the western side of Richmond Hill which provides connectivity between the subject lands and the town of Fermoy. The appellants raise the issue of a right of way to access the lands. This is not

matter for consideration under Section 653B of the Taxes Consolidation Act, 1997, as amended. Therefore, it is reasonable to consider that the subject lands have access to a public road, footpath and streetlighting in proximity to the subject lands and that connectivity to same from the subject land is easily achievable.

7.8 The zoning of the subject lands at present is for Existing Residential/Mixed Residential and Other Uses as set out within the Fermoy Settlement Plan, as included within Volume 3 of the current Cork County Development Plan 2022-2028. The appellants set out within correspondence submitted to the LA on the 10th day of July 2024 that they do not wish to have a change of zoning to their lands. I am satisfied that the lands are suitable for residential development as identified by the local authority within their assessment. The issue of rezoning of the lands is not a matter that is set out as a reason for exclusion from the RZLT map as per Section 653B (c) of the Taxes Consolidation Act, 1997, as amended.

7.9 Therefore, in my opinion the subject lands should be considered to be in-scope.

8.0 Local Authority Response to appeal submission.

8.1 The Local Authority did not wish to make any further observations on the appeal, and that all matters had been addressed within the assessment report and notification of determination.

9.0 Recommendation

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

10.0 Reasons and Considerations

10.1. The lands identified as ADRZLT 601526849 and parcel ID number FY-ZLT-08 are located on Existing Residential/Mixed Residential and Other Uses 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 equine facility, however the lands are zoned for

residential and other uses. The lands are located within an established urban area with services available, and 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/mixed residential and other uses zoning objective that applies to these lands. The lands are also accessible onto the public road along Richmond Hill. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Cork County Council

Local Authority Reference Number: ADRZLT 601526849

Appeal David & Kathleen 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: Richmond Hill, 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 and direct the Local Authority to retain the lands identified as Parcel ID number FY-ZLT-08 and Local Authority reference number ADRZLT 601526849 should remain on the RZLT map.

Reasons and Considerations

The lands identified as ADRZLT 601526849 and parcel ID number FY-ZLT-08 are located on Existing Residential/Mixed Residential and Other Uses 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 equine facility, however the lands are zoned for residential and other uses. The lands are located within an established urban area with services available, and 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/mixed residential and other uses zoning objective that applies to these lands. The lands are also accessible onto the public road along Richmond Hill. 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

9th day of October 2024