



An
Bord
Pleanála

Inspector's Report ABP-320465-24

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 Goat Street, Farranflaherty, Dingle, Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

KE-C18-RZLT-8

Appellant(s)

Eileen Moriarty

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The appeal lands, identified as Parcel ID KY0000000655 on the RZLT Final Map and with a stated area of approximately 0.54 hectares, are located on the northern side of Goat Street in the townland of Farranflaherty, Dingle, Co. Kerry.

2.0 Zoning and Other Provisions

- 2.1. The appeal site is zoned R1 'New / Proposed Residential' in the Dingle / Daingean Uí Chúis Local Area Plan (LAP) 2021-2027 which forms part of the Corca Dhuibhne Electoral Area LAP.
- 2.2. The R1 zoning objective states the following: 'To facilitate the development of residential units in accordance with the Core Strategy.'

3.0 Planning History

An Bord Pleanála Reference ABP-316913-23 / Planning Authority Reference KE-C6-RZLT-22 refers to an August 2023 decision which notes that the subject lands meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and therefore the subject lands are to be included on the RZLT map.

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 are farming the lands and are not involved in property development, that a request to zone the lands was never made and that there are sufficient lands available for development in Dingle.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site was in scope and that it be included in 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 it 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 have been in family ownership for over a century and are currently and have always been used for agricultural purposes during this period.
- The appellant is not a property developer.
- No submission was made to have the lands zoned and this was done without the appellant's knowledge.
- The town of Dingle already has sufficient lands available for development.
- The tax penalises farmers for conducting their trade.
- It is not likely that planning permission would be granted on the lands.

6.2. Planning Authority Response

- All of the planning issues raised are dealt with in the planner's report.
- The content of the appeal does not raise any additional issues that are required to be addressed by the planning authority.

7.0 Assessment

- 7.1. The grounds of appeal raise issue with the imposition of the RZLT on farmers. This matter is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. 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 of the act for inclusion on the RZLT map. The Residential Zoned Land Tax - Guidelines for Planning Authorities (June 2022) clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states 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. I note the comments made regarding the agricultural use 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).
- 7.3. 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.
- 7.4. 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 Parcel ID KY0000000655 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 Parcel ID KY0000000655 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-8

Appeal by Eileen Moriarty 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: Goat Street, Farranflaherty, 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 Parcel ID KY0000000655 on the final map.

Reasons and Considerations

The lands identified as Parcel ID KY0000000655 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

2nd September 2024