



An  
Bord  
Pleanála

## Inspector's Report ABP-320478-24

---

### 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

Richmond Hill, Fermoy, Co. Cork

### Planning Authority

Cork County Council

### Planning Authority Reg. Ref.

ADRZLT 600956944

### Appellant(s)

James Spillane

### 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. The north-western portion of the subject lands adjoin the public roadway at Richmond Hill. The lands are stated to be currently in agricultural use. The St Colman's Park and St Marys Crescent residential developments are located immediately west of and contiguous to the lands. The subject lands are stated to comprise an area of 3.59 hectares and the parcel id number is FY-R-02.
- 1.2. There is a concurrent RZLT appeal reference number 320432-24 in relation to a land parcel immediately adjoining and north 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 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 identified as FY-R-02 and zoned for Medium A density residential development including the option to provide a hotel at the western side of the site with frontage onto Richmond Hill and provision for pedestrian link between the lands to the east and the public road to be provided. Development proposals should ensure the protection of national monument COO5448 on site.

## **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 appellant made a submission to the Local Authority seeking to have his lands removed from the RZLT map. He raises the following issues:
  - The subject land is part of a small agricultural family run holding.

- The lands are used for agricultural purposes, and it is not their intention to develop the lands for other purposes.
- Seeking that the zoning of the lands be altered.

Further information was submitted by the appellant to the local Authority in the form maps identifying the subject lands along with their land parcel identification numbers.

## **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 appellant works as a full-time farmer and butcher and actively farms the lands.
- There is a lack of services and infrastructure serving the lands.
- Seeks exclusion on the basis the lands are part of the appellants butchery trade which provides services to local residents.
- Sheep and cattle are grazed on the subject lands prior to being slaughtered, processed and chilled in an abattoir, owned by the appellant and beside the subject property.
- The appellant was not served with an adequate map or a valid determination by the local authority in respect of the RZLT.

- The Local Authority determination is flawed as they were not in full possession of the facts in relation to his butchery business, adequacy of services or infrastructure, the absence of connectivity to the lands via public footpath on the eastern side of Richmond Hill.
- Access from the subject lands is onto Richmond Hill which is not safe or suitable for access to a residential or hotel development.
- The local authority has not properly had regard to the Taxes Consolidation Act, 1997 legislation in terms of being reasonable to consider access to services and infrastructure.
- The local authority failed to acknowledge that upgrade works are required to the Fermoy WWTP to allow for further development in the town.
- No correspondence from Uisce Eireann (UE) has been submitted in relation to the adequacy of the piped water services.
- The appellants' Consultant Engineer has set out a number of constraints pertaining to the lands including the prevalence of flooding at the northern end of the property, where the entrance meets Richmond Hill.
- The Consultant Engineer sets out that there is no surface/storm water drain in proximity to the subject lands. The subject lands could not be developed, in the absence of same. management issues,

## **7.0 Local Authority Response to appeal submission.**

7.1 The Local Authority (LA) issued a response to the grounds of appeal submitted by Mr. Spillane. They LA set out the following:

- The Local Authority issued a notification of determination in relation to the requested change of land use zoning for the subject lands on the 29<sup>th</sup> day of July 2024.
- The issue of agricultural use is not a matter for consideration under Section 653B of the Taxes Consolidation Act 1997, as amended.
- The local authority has had full regard to infrastructural capacity issues.
- The subject lands are not located within any flood zone and surface water management issues would be addressed as part of any planning application during the development management process.
- The issue of the operating abattoir on lands beside the subject lands was not raised by the appellant as part of his submission to the local authority and, therefore, was not considered by the local authority as part of its assessment.
- 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 that there is capacity available within the piped water services under other RZLT applications

including reference numbers ADRZLT6001911342 and ADRZLT600387463 in relation to other RZLT appeals in within the settlement of Fermoy.

## 8.0 **Assessment**

- 8.1. 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.”*

- 8.2. The lands identified for inclusion on the RZLT map are zoned FY-R-02-Residential in the current Cork Development Plan 2022-2028. This zoning Objective is to provide for Medium A density residential development including the option to provide a hotel at the western side of the site with frontage onto Richmond Hill and provision for pedestrian link between the lands to the east and the public road to be provided. Development proposals should ensure the protection of national monument COO5448 on site.
- 8.3. 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.
- 8.4. The appellant sets out that the lands are part of an active farm and are integral to the operation and success of the family butchery business which slaughters cattle and sheep having grazed the subject lands in advance. The abattoir business is stated to

be located beside the subject lands, but outside of the subject lands. The appellant has not demonstrated that the abattoir business has the benefit of a planning permission and that it is liable to commercial rates and provides services to residents of adjacent residential areas. Therefore, he has not demonstrated, based on the information submitted, that his butchery business falls within the exemptions provided for under Section 653B (i) of the legislation. I also note that the abattoir building is located outside of the subject lands' boundary, as stated within his appeal submission.

- 8.5. 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.
- 8.6. The fact that the lands are in active and established agricultural use does not qualify for omitting the lands from the map under Section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.
- 8.7. 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 as green and, therefore, wastewater 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 reasonably included as part of any development proposition for the site. Section 3.1.1 of the RZLT Guidelines specifically sets out the following in relation to lands in need of network upgrades "In general, a need for network upgrades would not exclude lands from being in scope where sufficient treatment capacity is confirmed to exist in water and wastewater treatment plants."

- 8.8. With respect to the gradient of the lands, this is not a matter for determination in accordance with Section 653B of the Taxes Consolidation Act 1897, as amended.
- 8.9. With respect to pedestrian infrastructure, the north-western portion of the subject lands front onto Richmond Hill, where there a public footpath along its western side which provides connectivity between the subject lands and the town of Fermoy. 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 achievable.
- 8.10. 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. The appellants were informed of the determination made by the local authority by correspondence dated the 26<sup>th</sup> 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.
- 8.11. 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,
- 8.12. The lands are not located within the flood risk areas identified within the flood risk mapping for Fermoy set out as part of the preparation of the Cork County Development Plan 2022-2028. In this regard, I am satisfied that there is no impediment to the development of the lands as a result of flooding. The issue of the absence of a surface/storm water drain in proximity to the lands is similarly not an impediment to the development of the subject lands. This matter would be addressed during the course of the development management process, in the event that a planning application is being made.
- 8.13. Therefore, in my opinion, the subject lands should be considered to be in-scope.

## 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 600956944 , parcel ID number FY-R-02

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 abattoir business is not located within the subject lands. The lands are located within an established urban area with services available, and no piped water services or road/footpath capacity issues 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:** ADRZL. T600956944

**Appeal** James Spillane 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 14<sup>th</sup> 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-R-02 and Local Authority reference number ADRZL. T600956944 should remain on the RZLT map.

### **Reasons and Considerations**

The lands identified as ADRZL. T600956944 , parcel ID number FY-R-02 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 abattoir business is lot located within the subject lands. The lands are located within an established urban area with services available, and no piped water services or road/footpath capacity issues 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

9th day of October 2024