



An
Bord
Pleanála

Inspector's Report ABP-320492-24

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

Swellan Lower, Cavan Town, Co. Cavan

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

RZLT 2024 Submission No. 7

Appellant(s)

Aidan Fortune

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject lands are located at Swellan Lower in Cavan Town. Land Parcel ID CNLA00000054 on the RZLT Final Map refers.

2.0 Zoning

- 2.1. The subject land is zoned 'Proposed Residential' in the Cavan County Development Plan 2022-2028, with the zoning objective to 'Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure.'
- 2.2. The zoning map indicates a 'Recorded Monuments and Buffer Zones' designation on the southern part of the wider landholding, which falls outside Land Parcel ID CNLA00000054. In this regard Objective C25 states: 'Due cognisance and protection shall be afforded to the natural and built heritage of the site, including Swellan Lough and its tributaries and the recorded monument to the south of the site.' For clarity the recorded monument is outside the land parcel which is the subject of this appeal.
- 2.3. The Cavan County Development Plan 2022-2028 incorporates a Local Area Plan for Cavan Town, for the period 2022-2028.

3.0 Planning History

Planning Authority Reference 23/159 refers to an October 2023 decision to grant permission for a residential scheme on the northern part of the landholding (Plot A). This scheme relates to a portion of an unfinished site comprising 96 residential units, a creche, connections to water supply wastewater and surface water infrastructure, and all associated works.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have the subject lands removed from the RZLT map. The submission notes that Plot A indicated on Drawing SK22-051-08 has the benefit of planning permission (PA Ref. 23159 refers), while it is intended to progress an application for Plot B (also indicated on the

aforementioned drawing) in the near future. In relation to PA Ref. 23159 Uisce Éireann (UÉ) made a submission to the Local Authority which stated that certain upgrades would be required to facilitate the development. Until these upgrades are implemented, it is requested that the lands are removed from the RZLT map.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site is in scope for RZLT for the following reasons:

- Site fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map.'
- Matters which are unrelated to the criteria identified in the submission as per Section 653B of the Act, such as, planning permission, commencement of land in scope, finance or personal circumstances are not matters that can be taken into account during consideration of submissions.
- The use of land for agricultural or horticultural purposes are not considered to be exempt from scope as they are not subject to rates.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- There is a conflict between the primary legislation, Section 80 of the Finance Act 2021, and the RZLT Ministerial Guidelines. The lands do not satisfy the qualifying criteria as set out in section 653B(b). Revenue Guidance on the RZLT (Part 22A-01-01 (Appendix 4) is consistent with the legislation. Reference is made to Section 2.2 which states: 'It is only when land is zoned for residential use and has access to necessary infrastructural services to allow for development that it is within the scope of the tax.'

- The RZLT Guidelines for Planning Authorities differentiates between treatment and networks (Section 3.1) and introduces rules on the location of lands (Section 4.1.1(iii)). Neither of these rules are covered by legislation but both were used to include the lands in the RZLT map. The rules are unreasonable, unfair as they do not consider the practicability of the cost of upgrades.
- A portion of the lands, Plot A has been disposed of to a third party (Map at Appendix 3 refers).
- Development of the remaining lands at Plot B cannot take place until roads and services in Plot A are completed. Plot B cannot have access to public infrastructure that does not yet exist. It is remote from existing infrastructure and should be removed from the RZLT map until adequate and appropriate infrastructure is in place.

The following Appendices are included with the appeal:

Appendix 1: Original submission and attachments to Local Authority

Appendix 2: Local Authority decision

Appendix 3: Map of lands currently in the appellant's ownership

7.0 **Assessment**

- 7.1. The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned for residential use and the Local Authority determined that they remain on the RZLT map. It is noteworthy that the map used by the Local Authority in its assessment encompasses additional lands compared to the lands included in the RZLT map (Land Parcel ID CNLA00000054 refers) as published by the Department of Housing, Local Government and Heritage. This latter map is the relevant map.
- 7.2. The appellant considers that there is a conflict between the primary legislation relating to RZLT and the Section 28 RZLT Guidelines. I note that Section 2 of the Guidelines state that their aim is 'to provide guidance to assist stakeholders in implementing the requirements of the taxation measure to activate zoned and serviced land for housing.' As such, the Guidelines are intended to function as a guide to aid in the implementation of the legislative provisions as set out in Part 22A of the Taxes Consolidation Act 1997

as amended. The primary legislative provisions must be complied with. In my view there is no conflict between the primary legislation and the Section 28 Guidelines, which simply serve as an aid for all stakeholders in implementing the primary legislation.

- 7.3. The appeal refers to Revenue Guidance on RZLT – Part 22A-01-01. It is noted that this Guidance is presently under review and that it does not reflect the current Revenue position.
- 7.4. The appellant contends that the lands are not serviced given that upgrades are required to facilitate development, and that the lands should be omitted from the RZLT map until upgrades are implemented. The ‘Serviced Land Definition’ of the RZLT Guidelines notes that ‘A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.’ Having regard to this, a need for upgrades to existing infrastructure is not considered criteria for exclusion under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.5. I note that UÉ’s Water Supply Capacity Register for Cavan town, published in June 2023, is stated to have ‘Capacity Available.’ In this context, the Capacity Register notes that water supply capacity is available to meet 2032 population targets. UÉ’s Wastewater Treatment Capacity Register for Cavan town, also published in June 2023 is ‘Green,’ meaning there is spare capacity available.
- 7.6. The appeal lands have access onto existing road infrastructure or access could be provided and they are serviced in terms of footpaths and public lighting. I am of the view that the site can be served in principle by the road network and footpaths in the immediate vicinity of the lands.
- 7.7. Matters raised in the appeal concerning commencement on lands in scope, scheduling of development on the lands and changes in the ownership of the lands are not matters which fall within the criteria for exclusion from the RZLT map as set out in Section 653B of the Act. In this regard, I note Section 3.2.3 of the Guidelines which state that:

‘Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions. Furthermore the size of the landholding, ownership of the land by private, public or semi-state

bodies, lack of knowledge of ownership or transfer of ownership should not be considered.'

- 7.8 I consider that the lands should remain for inclusion on the final RZLT map as the site is appropriately zoned for residential development and they have development potential as evidenced by the recent grant of permission pertaining to these lands. The subject lands meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I consider that the lands identified as part of Land Parcel ID CNLA00000054 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 part of Land Parcel ID CNLA00000054 on the RZLT Final Map zoned Proposed Residential are considered to be within scope of Section 653B(a). The lands are located within an established urban area and the Uisce Éireann water supply and wastewater capacity registers indicate capacity to serve the lands. The lands have access onto existing road infrastructure or access could be provided. 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.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Cavan County Council

Local Authority Reference Number: RZLT 2024 Submission No. 7

Appeal by Aidan Fortune 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 Cavan County Council on the 26th day of June 2024 in respect of the site described below.

Lands at: Swellan Lower, Cavan Town

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 part of Parcel ID CNLA00000054 on the final map.

Reasons and Considerations

The lands identified as part of Land Parcel ID CNLA00000054 on the RZLT Final Map zoned Proposed Residential are considered to be within scope of Section 653B(a). The lands are located within an established urban area and the Uisce Éireann water supply and wastewater capacity registers confirm capacity to serve the lands. The lands have access onto existing road infrastructure or access could be provided. 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.

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

19th September 2024