



# Planning law in Ireland: challenges to Residential Zoned Land Tax (RZLT) appeals

Insights - 27/11/2024

Can the decision of An Bord Pleanála to include land on the Residential Zones Land Tax final map be challenged? Grounds for judicial review may exist but applicants must act quickly.

The Residential Zoned Land Tax was introduced by the Finance Act 2021 as part of the Irish government's "Housing for All - a New Housing Plan for Ireland" policy. The plan was introduced to increase housing supply by incentivising landowners to activate existing planning permission and / or to seek planning permission on land which meets certain criteria.

## What is the Residential Zoned Land Tax?

The Residential Zoned Land Tax (RZLT) involves an annual tax of 3% applied to land within the scope of RZLT. While it was due to be implemented from 2024 onwards, section 92 of the Finance (No.2) Act 2023 deferred the first liability date until 1 February 2025.

In accordance with s.653C, as amended by s.653M of the Taxes Consolidation Act 1997 (1997 Act), it is the duty of each local authority to create a map of land deemed to fall within the scope of, and subject to liability for, RZLT. Appeals against the inclusion of land on the map by a local authority can be submitted to An Bord Pleanála in accordance with s.653J of the 1997 Act.

For land to be subject to RZLT, on or before 1 January 2022:

- the land must have been zoned for residential use and development.
- the land must have been serviced.
- The "owners" of a "relevant site" will be liable to pay RZLT. "Owners" include any person with an interest in the land or who has a right to develop on the land. A "relevant site" is the land as identified by the RZLT maps.

On 1 February 2024, draft maps of land affected by RZLT were published. However, a finalised RZLT map is due to be published by the end of January 2025 and will be updated annually thereafter. The map quantifies in hectares land satisfying the relevant criteria for inclusion on a map. There are a limited number of exceptions including residential property that includes gardens or yards under one acre or land that is used for certain social, community or governmental purposes.

## Submission to local authority

A landowner or a third party had until 1 April 2024 to make a submission to the local authority if they believed that the land included on the draft map did not meet RZLT criteria, if they believed land excluded from the map ought to have been included, and / or if they wanted to propose a correction to the date on which the land met the criteria. If their submission was rejected by the local authority, they had until 1 August 2024 to appeal to An Bord Pleanála.

## Decision of An Bord Pleanála to RZLT appeal

A review of An Bord Pleanála's website reveals that it has begun to issue its decisions in respect of final map RZLT appeals. So far, there have been 45 cases in Dublin where An Bord Pleanála have issued decisions, the majority of which confirm the determination of the local authority to include the land within the RZLT map. More decisions have been issued in respect of properties nationwide and further decisions are anticipated.

## Can the decision of An Bord Pleanála be challenged?

Upon review of An Bord Pleanála's decision, grounds may be identified to challenge by way of judicial review in the High Court.

## Is there a deadline to bring such a challenge?

Notwithstanding the fact that the RZLT was introduced by the 1997 Act, the prudent approach is to treat the decision as a planning decision for the purpose of judicial review. Judicial review proceedings in this context are subject to a strict time limit of **eight weeks** from the date of the decision of ABP. Time only stops running when an application seeking leave to proceed by way of judicial review is filed with the Central Office of the High Court, so any party considering initiating a challenge must act quickly.

It follows that any decisions of An Bord Pleanála which were, for example, issued in early October, will have an impending deadline for the issuance of judicial review papers to ensure any such application is brought within the eight week deadline.

Practically speaking, this means the clock is already running for many applicants that were

unsuccessful in any such appeals and intend to challenge the decision of An Bord Pleanála by way of judicial review.

## Conclusion

It is important that any affected parties who were unsuccessful in their appeal to An Bord Pleanála against the RZLT zoning since the beginning of October, carefully consider the decision of An Bord Pleanála to determine if there are any grounds upon which the decision could be challenged by way of judicial review. If there are such grounds, potential applicants should be aware of the approaching deadline for the issuance of a challenge by way of judicial review. Once the eight week deadline expires, this will significantly prejudice the grounds for any such challenge.

It is likely the courts will see a large volume of such challenges brought in the coming weeks to add to the proceedings already initiated and reported on in the media. A common theme for challenge appears to be where land determined by An Bord Pleanála to be liable for the RZLT, is argued not to have adequate services or infrastructure to support residential development, and / or is generally unsuitable for inclusion. It is expected that many of An Bord Pleanála's decisions in respect of RZLT may be challenged by way of judicial review. However, the time frame in which to do so is limited.

## How Ogier can help

If you would like to discuss any concerns regarding RZLT, how it effects your property and if there are grounds for challenge, please contact Maria Edgeworth or Cian O'Gorman via the details provided below.

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