



An
Bord
Pleanála

Inspector's Report ABP-316421-23.

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	Newtownmoyaghy, Kilcock, Co. Meath
Local Authority	Meath County Council
Local Authority Reg. Ref.	MH-C89-21
Appellant	McGarrell Reilly Homes Limited
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site is located in the townland of Newtownmoyaghy, to the north-east of Kilcock with site area indicated as 5.41 ha. The site forms parts of a larger land holding in the appellants ownership. The surrounding land use includes a mixed used developments including residential and retail.

2.0 Zoning

- 2.1. The site is zoned under objective A2 'New Residential', in the Meath County Development Plan 2021-2027, with a stated objective "*To provide for new residential communities with ancillary community facilities, neighbourhood facilities as considered appropriate*". As such, residential is use permitted on the subject lands.

3.0 Planning History

- 3.1. The following planning history relates to the subject site:
- Ref. RA201384: Conditional planning permission was granted by Meath County Council on the 5th of August 2021, for the demolition of an existing two-storey dwelling and the development of 94 no. residential dwellings, public open space, and residential car parking spaces. The development formed part of the larger Millerstown housing development, all ancillary infrastructure services, and the upgrading of the R125.

The application is subject to a referral to An Bord Pleanála (Case Reference RP17.315437) regarding a point of detail in relation to Condition No. 4 of planning permission RA201384 (decision pending).

Condition 4 of RA201384 states, "*Prior to the commencement of any development on the lands subject of this application, the applicant shall submit for the written agreement of the Planning Authority a revised and comprehensive Site Specific Flood Risk Assessment including the establishment of Flood Zone, Z, B and C, a revised site layout showing all residential units located outside of flood zones A and B and including the application of the Justification test to ensure the proposed development is in accordance with the DOEHLG/OPW publication "The Planning System and Flood Risk Management, Guidelines for Planning Authorities"*.

Reason: In the interest of proper planning and sustainable development of the area.

- Ref. DA191535: Conditional planning permission was granted by Meath County Council on the 3rd of March 2020, for minor revisions to part layout with an increase from 8 No. to 10 No. houses in the development approved by Reg No. RA/161443, and associated site works.
- Ref. RA191018: Conditional planning permission was granted by Meath County Council on the 5th of November 2019, for amendments to 78 No. 3 & 4 Bedroom 2 storey houses (Type P, P1, Q & Q2) in the development (to be known as Millerstown) approved by Reg. No. RA/161443 and associated site works.
- Ref. RA161443: Conditional 10-year planning permission was granted by Meath County Council on the 14th of December 2017, for a development consisting of 187 no. residential dwellings comprising apartments and houses in a mix of house types. The development also included public open space including part of a riverside linear park along the Rye Water River, creche (652GFA sqm), ancillary residential and creche car parking spaces and all associated infrastructure, development & works.
- Ref. RA150188: Permission was refused by Meath County Council and the decision to refuse permission upheld by An Bord Pleanála (PL.17.246143) on the 29th July 2016 for a development consisting of a 10 year planning permission for development. The development comprised 200 residential dwellings in a mix of units, including ancillary public open space provision, including a riverside linear park along the Rye Water River and creche (592sqm GFA). The development also included a of 400 no. ancillary residential car parking spaces and 24 no. ancillary car parking spaces in connection with the creche.

The reason for refusal stated:

“Objective RD OBJ 1 of the Kilcock Environs Written Statement, as set out in the Meath County Development Plan 2013 – 2019, as varied, seeks to reserve a site of 1.6 ha for a primary school within the area zoned for development east of the R125. It also requires that the school be located adjacent to the neighbourhood centre. The scale of development proposed on this site and on the adjacent site would together

bring the Kilcock housing allocation towards substantial completion as set out in the core strategy in the Development Plan. Having regard to the scale of development proposed on both sites, it is considered that, in the absence of a school site adjacent to the neighbourhood centre, the proposed development would fail to set out a coherent strategy for the coordinated and integrated and sustainable development of these strategic lands, would materially contravene Objective RD OBJ 1 of the Meath County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area”.

3.2. The following permission has been referenced in the appeal and relates to the adjoining site to the north of the RZLT site:

- Ref: RA/22910: Planning permission was refused by Meath County Council and is on appeal to An Bord Pleanála (ABP-314703-23 – DECISION PENDING) for a development consisting of the construction of 530 no. residential units in a mix of houses, duplexes, and apartments, all with private amenity space and associated car parking. The development also includes:
 - i. 1 No. neighbourhood centre (c.1, 598sq.m).
 - ii. 1 No. 16-classroom Primary School (c.3, 052sq.m).
 - iii. 1 No. childcare facility associated external play area and car parking spaces; and the provision of new sports changing room facilities, associated entrance road and car parking spaces.
 - iv. 2 No. 13m lattice masts in the southern section of the site together with the relocation to underground of 2 No. 10kV and 2 No. 38kV overhead lines.
 - v. New boundary walls and fences, open space, internal site roads, pavements, public lighting, tree planting, landscaping, bin storage, ESB substations and all ancillary works necessary to facilitate the development.

The reasons for refusal included that the development would be contrary to the development Plan given the specific zoning objective, that the proposal exceeded the Core Strategy allocation for Kilcock, that the development failed to demonstrate that the development will not be at risk of flooding, that the development partly

located on lands zoned “F! Open Space”, and that a primary school or residential use was not permitted in principle and the absence of a Retail Impact Study and supporting sequential test for the proposed neighbourhood centre would be contrary to the proper planning and sustainable development of the area.

I note that part of this site associated with Ref: RA/22910 is included within the RZLT site boundary.

- RA/150205: Conditional 10-year planning permission was granted by Meath County Council and decision to grant permission upheld on appeal to An Bord Pleanála (PL.17.246141) on 29th June 2016 for the construction of 152 no. new residential dwellings, in a mix of house types together with ancillary public open space provision, including a riverside linear park along the Rye Water River and childcare facility (337 sq. m GFA). The development included associated parking and all associated site development works.

4.0 Submission to the Local Authority

- 4.1. The landowner stated that the lands do not have the necessary access to the public infrastructure and that this is demonstrated by the inclusion of a condition on the planning permission for the site Ref. No. RA/201384. It is noted that Meath County Council are delaying the delivery of the development and housing by refusing to agree the compliance that has been submitted for the permission.
- 4.2. There is an ongoing appeal on the subject site in relation to a school development and that a future neighbourhood centre is to be provided. It is submitted that as there is an ongoing application for the school that the lands subject to the school application should be removed from the map as this site will provide community infrastructure once the development is granted by An Bord Pleanála.
- 4.3. In this regard, for some of the lands it is submitted that the required infrastructure was not in place on 1st January 2022 or since this date and as such the subject lands should not be included in the Draft RZLT maps. For the remainder of the lands it is noted that the site should be removed due to the application for a school as per section 653b(c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended.

5.0 Determination by the Local Authority

- 5.1. In relation to the attachment of conditions on a permission, it should be noted that the granting of planning permission as the attachment of conditions are addressed under separate legislation being the Planning and Development Act, 2000, amended.
- 5.2. There are different considerations in terms of both matters and what is considered to be adequately serviced. The attachment of a condition and lack of agreement in relation to same is not a relevant consideration in the case of RZLT.
- 5.3. In relation to the lands that are subject to an application and may provide a school, it should be noted that the land referenced to in the submission has not been designated as a school site. Whilst it is noted that the Meath County Development Plan, 2021-2027 includes an objective to support the provision of a school in (KIL OBJ 3) the site is not specifically designated. Section 3.1.2 of the RZLT Guidelines is outline the following: *“Where the land is zoned for residential development and specific objectives apply to provide such facilities but the extent of land required for such a use is not identified, the land will fall into scope until such time as it is development and the relevant land will then fall out of scope”*.
- 5.4. The Council further notes that the lands have been subject to previous permissions (RA/150205, RA/161443, and RA/201384), and it is understood that construction is currently underway on site on foot of these permissions.
- 5.5. The local authority concludes that neither of the matters raised are relevant in this case and the lands shall be considered to be ‘scoped-in’ for the purposes of the Draft RZLT maps, and no change is required to the Draft RZLT Map.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant is actively seeking to develop the lands. The appellant states that they are awaiting a decision from An Bord Pleanála regarding a point of detail referral (RA/201384 & ABP-315437-22) submitted in relation to compliance with Condition 4 of planning permission RA/201384 for the

construction of 530 dwellings, which could not be agreed with Meath County Council, despite various attempts to satisfy the requirements of the Council by the appellant. A detailed chronology of events forms part of the appeal.

- The appellant states that the lands should be excluded from the Draft RZLT Map on the basis that the commencement of development on the lands is precluded through the non-agreement of pre-commencement condition compliance with the Planning Authority.
- The appellant states that the land subject of Planning Permission RA/161443 for the development of 187 dwellings is identified to be included in the Draft RZLT Map and these houses have been delivered (and the sale of same will be complete in the upcoming weeks), and therefore the subject land should not be liable for tax. The appellant refers to Section 3.1.1 of the RZLT Guidelines and Section 653O(a) of the Taxes Consolidation Act, 1997, which states: *“Land which is zoned residential and contains existing residential development such as estates or individual house are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax”*.
- The appellant states that Planning Permission RA/161443 provided for the delivery of a creche (which is yet to be constructed). It is assumed that the land which has obtained planning permission for a creche will be removed from the RZLT maps given that planning permission was approved for the delivery of community infrastructure.
- The appellant clarifies that the submission to Meath County Council did not include lands subject to planning permission RA/150205, which provided for the construction of 150 residential units. The appellant states that this development is close to completion and the majority of houses have been delivered. It is therefore assumed that this land will not be liable for tax although this land is included on the Draft Maps as per Section 3.1.1 of the RZLT Guidelines.
- The appellant notes that it is an objective of the Meath County Development Plan, provided within the Kilcock Environs Written Statement to seek the

provision of a school within the Kilcock Environs. The proposed school and neighbourhood centre site, which is subject of an appeal with An Bord Pleanála (RA/201384 & ABP-315437-22), will facilitate the surrounding permitted and constructed residential development. A specific objective which stipulates where the school should be located has not been provided however a small portion of land in Kilcock is zoned 'Community Infrastructure (C1)', however the quantum of this area zoned C1 verses the area required to facilitate a school as per the area subject to the planning application (RA/201384 & ABP-315437-22), it cannot be assumed that this was the area designated to provide a primary school for Kilcock.

- The school has not been proposed on land zoned 'Community Infrastructure' and instead is appropriately zoned on the 'A2 – New Residential', zoned land, immediately adjoining the proposed neighbourhood centre site. As a result, once the development is permitted the school site should be removed from the Draft RZLT Map, as outlined in Section 3.1.2 of the RZLT Guidelines.
- In relation to the neighbourhood Centre, pursuant to Section 653B(i) lands which are in use as a premises in which a trade or profession are providing services to the local residents, are not unauthorised development and are paying commercial rates are to be excluded from the RZLT Maps. The site should be excluded once permission is granted for the development and the proposed neighbourhood centre is complete. These lands would not be liable for tax under Section 653O(5) of the Taxes Consolidation Act, 1997, following completion certification to the local authority.

6.2. No additional report was received from Meath County Council following the appeal. The local authority in their response to the appeal noted that there was no further information request made to Irish Water, the NRA, or any prescribed body. A copy of the local authority determination was submitted.

7.0 Assessment

7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. It is noted that subject site is zoned A2 'New Residential', in the Meath

County Development Plan 2021-2027, with a stated objective “*To provide for new residential communities with ancillary community facilities, neighbourhood facilities as considered appropriate*”.

- 7.2. Section 3.2.3 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, describe consideration of submissions on Inclusion on maps and states 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*”. As such planning permission on a site is not criteria for consideration as identified in section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.3. The reference to planning application RA/201384 & ABP-315437-22 in relation to the point of detail on a compliance condition attached to the planning permission for a residential scheme on this site is not a consideration for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.4. As per the planning history on site, I note that under Planning Permission RA/161443, included the provision of a creche as part of the residential scheme permitted on part of the lands. As such, I consider that part of the land is required for the provision of community services as per the permission (RA/161443).
- 7.5. I refer to Section 653B(c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended, which states;
- “(c) it is reasonable to consider 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 known archaeological or historic remains, but which is not land—*
- (iii) that it is reasonable to consider is required for, or is integral to, occupation by—*
- (I) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,”*
- 7.6. The Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022 also state “*As set out within the legislation, it is reasonable to exclude land required*

for the provision of community services and infrastructure which will sustain existing and future residential communities”.

- 7.7. Having regard to the Act and the Guidelines I consider that the permitted creche facility (under Ref: RA/161443) on site determines that the lands subject to that permission are required, integral and occupied by social and community infrastructure, as per Section 653B (c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended, and therefore the lands subject to this permission cannot be considered to be suitable for inclusion on the RZLT Map. As such, I recommend that the land pertaining to the creche site boundary only be removed from the RZLT map.
- 7.8. The appellants reference to the development permitted under planning permission RA/150205 does not form part of the subsequent appeal and I note that the lands subject to this permission are not with the RZLT site boundary.
- 7.9. The appellant references the proposed school and neighbourhood centre site application, which following a refusal from Meath County Council is subject of an appeal with An Bord Pleanála (RA/201384 – ABP-315437-22). The appellant states that once permitted this development should be removed from the site as this will facilitate the surrounding permitted and constructed residential development. I note that this application is currently on appeal to An Bord Pleanála, pending a decision. Furthermore, the site boundary for this planning permission only includes a portion of the RZLT site boundary. Notwithstanding, permission has not been granted for this development and as such, the lands subject to the proposed school and neighbourhood centre site cannot be considered to be required or integral to occupation by such uses as per Section 653B(c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended.
- 7.10. I also reference Section 3.1.2 ‘Exclusions from the Map’, “Land Required for Infrastructure and Community Services’ of the Residential Zoned Land Tax, Guidelines for Planning Authorities, 2022, which states “*As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities. The lands targeted by the taxation measure are zoned and serviced for residential or residential and a mixture of other uses in Development Plans and LAPs. Statutory land use plans may identify requirements for built facilities such as*

schools, transportation, community centres, or open spaces, through mapped specific objectives or individual zonings. Where zoned for such uses, the land in question would not fall into scope. Where the land is zoned for residential development and specific objectives apply to provide such facilities, but the extent of land required for such a use is not identified, the land will fall into scope until such time as it is developed and the relevant land will then fall out of scope”.

7.11. The appellant refers to the development of 187 dwellings (under Planning Permission RA/161443), and the proposed neighbourhood centre (under Planning Permission RA/201384 – ABP-315437-22) and states that the dwellings are delivered on site, and that the neighbourhood centre, once permitted would subject to commercial rates. The appellant references Section 653O(a) of the Taxes Consolidation Act, 1997, as amended in this regard. However, the Board is restricted in its determination of the appeal to the criteria set out in Section 653B of the Act. As such, the delivery of dwellings on these lands and the proposed neighbourhood centre site does not fall within the criteria under Section 653B of the Taxes Consolidation Act, 1997, as amended.

This position is consistent with the Residential Zoned Land Tax, Guidelines for Planning Authorities, 2022, which 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”.

7.12. The other references to the planning permissions on site are noted, however this is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.

7.13. I consider that the lands are considered to be serviced for residential dwellings as per as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

8.1. I recommend that the board partly confirm the determination of the Local Authority in respect of the lands identified as MH-C89-21 as follows:

- (i) That the lands pertaining to the creche site boundary granted under Planning Reference PA/161443, only, be excluded from the RZLT map.
- (ii) The remaining lands as identified MH-C89-21 are considered in scope and should be included on the relevant RZLT maps.

9.0 Reasons and Considerations

9.1. The appellant requested that they are awaiting a decision from An Bord Pleanála on regarding a point of detail in relation to a compliance condition of a planning permission, that the site has planning permission and several units have been constructed and that the proposed school and neighbourhood centre which is subject of an appeal with An Bord Pleanála, should be excluded.

9.2. Having regard to the permitted creche facility (under Planning Reference: PA/161443) on site, this determines that the lands pertaining to the creche site boundary granted under Planning Reference: PA/161443, are required, integral and occupied by social and community infrastructure. The lands as part of this appeal identified as MH-C89-21, that form part of the creche site boundary subject to Planning Reference PA/161443, are, therefore, required for, or *is integral to, occupation by, social and community infrastructure* as per Section 653B (c)(iii)(I) of the Taxes Consolidation Act, 1997, as amended, and should not be included on the relevant RZLT maps.

9.3. The remaining lands as identified MH-C89-21 are considered in scope as per Section 653B of the Taxes Consolidation Act 1997, as amended, and should be included on the relevant RZLT maps.

I confirm that the report represents my profession 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.

Emma Nevin
Planning Inspector

20th September 2023