



An
Bord
Pleanála

Inspector's Report ABP-316446-23.

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

Lands at Castlemartin Stud, Naas Road, Co. Kildare

Local Authority

Kildare County Council

Local Authority Reg. Ref.

KCC-C108-53

Appellant

Clementville Limited

Inspector

Emma Nevin

1.0 Site Description

- 1.1. The site, with an area of 3.22ha, is located to the north of Kilcullen town centre and forms part of a larger landholding associated with the Castlemartin Stud farm. The subject site addresses the Naas Road, and comprises of fields, in use as paddocks associated with the Stud Farm.

2.0 Zoning

- 2.1. The site is zoned 'new residential' in the Kilcullen Local Area Plan 2014 - 2020 under objective C, with a stated objective "To provide for new residential development".
- 2.2. The plan further states that "*This zoning provides for new residential development and associated local services ancillary to residential development. While housing is the primary use in this zone, recreation, neighbourhood services, education, crèche / playschool, clinic / surgery uses and sheltered housing are also envisaged, subject to the preservation of neighbouring residential amenity. Permission may also be granted for home based economic activity within this zone, subject to the preservation of residential amenity and traffic considerations. New residential areas should be developed in accordance with a comprehensive plan detailing the layout of services, roads, pedestrian and cycle routes and the provision and landscaping of public open space and play areas*".
- 2.3. The Kilcullen Local Area Plan expired in 2020 and was not incorporated into the Kildare County Development Plan 2023 - 2029. Chapter 2, Core Strategy & Settlement Strategy, of the Development Plan states it is an objective of the Council to; "*CS 09 Review and prepare on an ongoing basis a portfolio of Local Area Plans (LAPs) for the mandatory LP settlements (and environs, where appropriate) of Naas, Maynooth, Newbridge, Leixlip, Kildare, Athy, Celbridge, Kilcock, Monasterevin, Sallins, Clane and Kilcullen in accordance with the objectives of the County Development Plan and 36 all relevant Section 28 Ministerial Guidelines.*

3.0 Planning History

Pertaining to subject site:

Ref: 22/1406: Condition planning permission granted by Kildare County Council on the 23rd June 2023 for the construction of a new housing courtyard to provide housing accommodation for the Foaling Manager and the foaling staff of Castlemartin Stud Farm, parking spaces and all plant and services, drainage and associated site and landscaping works and all ancillary development.

Ref: 19/1302: Condition planning permission granted by Kildare County Council on the 21st January 2020 for the construction of a new Gate Lodge to provide housing accommodation for the Equine Manager of Castlemartin Stud Farm, parking and all services, drainage and associated site and landscaping works and all ancillary development.

4.0 Submission to the Local Authority

- 4.1. The appellant submits that although the grounds are zoned residential, they are currently used as essential paddocks as part of the Castlemartin Stud Farm and are an integral part of the equine operations on the stud farm.
- 4.2. The appellant submits that the lands are necessary to sustain the 10 million euro investment in Castlemartin. The inclusion of the lands on the RZLT map would undermine and drive such investment from Kilcullen which would be contrary to the development plan policy to support the equine industry.
- 4.3. As such the appellant requests that the lands are removed from the Draft RZLT Map.

5.0 Determination by the Local Authority

- 5.1. The subject land is included in the Kilcullen Local Area Plan 2014-2020 and is zoned for residential development.
- 5.2. The land is serviced, or it is reasonable to consider may have access to services, necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.
- 5.3. The legislation provides that matters which are unrelated to the criteria identified in Section 653B such as the size of the land holding, the ownership of the land, finance or personal circumstances are not matters to be taken into account during consideration of submissions.

5.4. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial Guidelines “Residential Zoned Land Tax – Guidelines for Planning Authorities’ for inclusion on the RZLT Map.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant requests that the lands be rezoned from residential zoning objective ‘C’ back to agricultural use objective ‘I’ to reflect their established use. In parallel with this appeal, a formal request to Kildare County Council to vary their Development Plan zoning by means of a variation of the Kilcullen Local Area Development Plan 2014 - 2020. This change to the zoning would have the effect of removing the said lands from the eligible criteria of the residential zoning land tax as the land would no longer be zoned residential.
- In addition, the remaining lands at this location, which are currently zoned for residential use, and have been developed as a gate lodge, Ref. 19/1302. The area is also the subject of a planning application Ref: 22/1406 for the provision of employee housing for the foaling manager and staff. ‘Rose Cottage’ is already an established residence and, therefore, does not warrant inclusion as the lands are already developed or committed to being developed. As such these lands should be omitted.
- It is submitted that such a change in zoning strategy is fully in accordance with the proper planning and sustainable development of the area and would support the established use of the lands as essential paddocks supporting sports facilities infrastructure, specifically the sport of horse racing, which is estimated to contribute significantly to the economy of County Kildare.
- The appellant states that the requirement for the lands to be used for sports facilities infrastructure, namely the provision of paddocks for the training of horses engaged in the sport of horse racing which comprises a significant sport concentrated within Kildare is a reason for the subject lands to being excluded from the draft or RZLT map in accordance with the criteria set out in

the Act. The planning authority misinterpreted its own Development Plan in respect of the sport of horse racing and misinterpreted what comprises sports facilities infrastructure for the purpose of S653B of the Act. Regard should be had to the Kildare County Development Plan 2023 – 2029, Section 4.20, Section 4.21 and Section 9.5, which acknowledges the importance of the sport of horse racing and the integrated nature of stud farms in providing the necessary sports facilities infrastructure to support horse racing in Kildare.

- The RZLT as applied to Castlemartin stud farm would be anti-competitive contrary to the principles of competition law as it would impose significant costs on the Castlemartin stud farm that would not apply to other stud farms.

7.0 Assessment

- 7.1. The comments raised in the appeal are noted and the report of the Planning Authority with supporting reports are noted.
- 7.2. The parcel of land subject to the RZLT appeal is zoned 'C', for new residential. The appellant is seeking to amend/rezone the land and refers to a submission made to Kildare County Council to rezone these lands, as part of the appeal. 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 proposed rezoning of lands does not fall within the said criteria.
- 7.3. The reference to the residential development constructed, and the planning permissions for residential development permitted on the subject site, does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.4. The appellant states that the land is in use as sports infrastructure, however I consider that the subject lands in use as paddocks does not fall within the remit of sports infrastructure for the purposes of the RZLT. As such, the stated and established use of the lands does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.

- 7.5. The reference to competition law and the associated costs to the stud farm as a result of the tax imposed, as raised by the appellant, is not a consideration for the Board as per Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.6. Notwithstanding, the zoning of these lands is under the Kilcullen Local Area Plan 2014 – 2020, and this plan has now expired. While it is an objective of the Core Strategy and Settlement Strategy to “CS 09 *Review and prepare on an ongoing basis a portfolio of Local Area Plans (LAPs) for the mandatory LAP settlements (and environs, where appropriate) of Naas, Maynooth, Newbridge, Leixlip, Kildare, Athy, Celbridge, Kilcock, Monasterevin, Sallins, Clane and Kilcullen in accordance with the objectives of the County Development Plan and 36 all relevant Section 28 Ministerial Guidelines*”, it is unclear as to whether the Planning Authority have commenced the process of preparation of a new local area plan for Kilcullen, and the current plan has expired.
- 7.7. The subject lands are therefore not zoned, as per Section 653B(a) of the Taxes Consolidation Act, 1997, as amended, and the lands cannot be considered to be suitable for inclusion on the RZLT maps.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the Local Authority and that the lands identified as KCC-C108-53 be removed from the map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that these lands should be rezoned, part of these lands have been developed for residential, the use of the land is considered to be sports facilities and the cost implications of such a tax being imposed.

The zoning of these lands was under the Kilcullen Local Area Plan 2014 – 2020, and this plan has expired, there is no replacement Local Area Plan under preparation. The lands identified as KCC-C108-53 are, therefore, not zoned, as per Section 653B(a) of the Taxes Consolidation Act, 1997, as amended and should not 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

25th August 2023