



An
Bord
Pleanála

Inspector's Report ABP-316476-23.

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 Southgreen Road and Old Road, Kildare Town, Co. Kildare
Local Authority	Kildare County Council
Local Authority Reg. Ref.	KCC-C108-20
Appellant	Pousterle Limited
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site, subject to the appeal, is located to the west of Kildare town centre and forms part of a larger landholding which is split into different zonings as per the Local Area Plan, i.e. 'C1' and 'C2' lands, with the 'C1' lands being located closer to the town centre.

2.0 Zoning

- 2.1. The site subject to the appeal is zoned 'new residential' in the Kildare Local Area Plan 2012 - 2018 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 Kildare Local Area Plan expired in 2018 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: ABP-305858 – Strategic Housing Development – pre application consultation for 1324 no. residential units (516 no. houses, 808 no. apartments), creche and associated site works – it was determined on 13th July 2020 that the proposal requires further consideration/amendment.

Ref: 17764 - Planning permission granted by Kildare County Council and decision to grant permission upheld by An Bord Pleanála (ABP – 302145) on the 14th January 2020 for a development consisting of modifications to development permitted under Reg. Ref. 07/1450.

Ref: 13155 – Extension of duration of permission granted by Kildare County Council on 26th April 2013 of development permitted under Ref. 07/1450.

Ref: 071450 – Conditional planning permission granted by Kildare County Council (subsequent appeal to An Bord Pleanála withdrawal) on the 8th August 2008 for a development consisting for residential development consisting of 212 no. dwellings of varying house types and all associated site works.

4.0 Submission to the Local Authority

- 4.1. The appellant submits that the client is currently engaging with Kildare County Council on a proposal for an LRD application on the 'C1' lands and the client would be unjustifiably penalised should the RZLT tax be applied to the lands.
- 4.2. The appellant requests the removal of the 'C1' lands within their ownership as the site is currently within the LRD process.
- 4.3. The appellant submits that the 'C2' lands are not considered to fall into the scope of given that (a) they do not have access to or cannot be connected to services or infrastructure until such time as Phase 'C1' lands are developed and built out; and (b) 'C2' lands did not have access to or could be connected to services and infrastructure on the relevant date (on or after 1 January 2022).
- 4.4. As a result, the 'C2' lands should be removed from the RZLT maps and be reviewed at a more appropriate time.

5.0 Determination by the Local Authority

5.1. The subject land is included in the Kildare Local Area Plan 2012-2018 and is zoned for residential development.

5.2. A report was received from Uisce Eireann which confirms that:

- A watermain and sewer exists on the public road in close proximity to the site, GIS data indicates that the watermain is accessible 20 metres away, via the road, South Green Road, adjoining land parcel.
- A sewer exists on the public road in close proximity to the site. GIS data indicated that the sewer is accessible 170 metres away via the adjoining land to the Dunmurray Road adjoining the land parcel.

Uisce Eireann states that it has not information as to the ownership of the lands surrounding the land parcel and the Planning Authority may need resource to local knowledge to provide additional information.

5.3. The Kildare County Council Water Services department have confirmed that the 'C2' land is not serviced. Therefore, it is determined that the 'C2' lands be removed from the RZLT Map.

5.4. It was recommended that the 'C1' lands be retained on the RZLT Map, as the 'C1' land is included in the Kildare Town Local Area Plan 2012-2018 and is zoned for residential development. The land 'C1' is serviced, or it is reasonable to consider that the subject lands may have access to serviced necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant acknowledges the Council's determination that the C2 lands, the subject of the original submission, should be removed from RZLT mapping, and in this regard these lands do not form part of this appeal.

- Applying the RZLT to a 'C1' zoned site that is currently within the Large-Scale Residential Development (LRD) process is unjust. The appellant is committed to achieving viable planning permission on these 'C1' zoned lands. This is particularly true given the inclusion of this site in a previous Strategic Housing Development (SHD) pre-planning application and given that more recently, this site is the subject of a LRD process. As such, the client cannot be accused of trying to maintain a 'vacant' or 'idle' status on this 'C1' zoned land.
- The appellant strongly recognises the need for additional residential accommodation and the Board should overturn the Council's decision to keep these 'C1' zoned lands from 'scope' given that every effort is being made to develop this site.
- It is submitted that including these lands for RZLT will ultimately increase the development costs within this site and subsequently reduce any affordability of any residential accommodation that may be permitted on these 'C1' lands.

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. Following Kildare County Councils determination, the appeal relates to the 'C1' lands only.
- 7.3. The reference to the appellants commitment to develop these lands for residential development, the reference to the previous SHD, the current LRD application, 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 reference to the potential increase in development costs and affordability of any residential accommodation on these 'C1' lands, as raised by the appellant, is not a consideration for the Board as per Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.5. Having regard to the report from Uisce Eireann, I consider that there is viable water and wastewater connections available in proximity to the site. As such, the site is

suitably serviced and are considered to be ‘connected’ or ‘able to connect’ as per Section 653B(b) of the Taxes Consolidation Act, 1997, as amended.

- 7.6. Notwithstanding, the zoning of these lands is under the Kildare Town Local Area Plan 2012 – 2018, 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 Kildare Town, 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 part of this appeal as ‘C1’ - KCC-C108-20 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 the appellant is committed to developing these lands for residential development and the potential increase in development costs and affordability of any residential accommodation on these lands as a result of such a tax being imposed.

The zoning of these lands was under the Kildare Town Local Area Plan 2012 – 2018, and this plan has expired, there is no replacement Local Area Plan under preparation. The lands identified as part of this appeal as ‘C1’ - KCC-C108-20 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

7th September 2023