



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316500-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Sundrive Road and Hands Lane, Rush, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	RZLT051/22
<b>Appellant(s)</b>	Gerry and Michael Leonard
<b>Inspector</b>	Rachel Gleave O'Connor

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## **1.0 Site Location and Description**

- 1.1. The site is located to the north of Sundrive Road and west of Hands Lane, with frontage along both of these roads. There is individual, one-off houses, situated to the north, south, east and west of the site, with agricultural fields in the wider area. The site itself is an agricultural field.

## **2.0 Zoning and other provisions**

- 2.1. The site is zoned RS – Residential and within the defined Development Boundary for Rush under the Fingal County Development Plan 2023-2029. It is just to the south and immediately adjacent to lands zoned as the Town Centre for Rush. The site is also within a defined Framework Plan area.

## **3.0 Planning History**

- 3.1. No records of any relevant planning history.

## **4.0 Submission to the Local Authority**

- 4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. The submission stated that the lands for an essential component of the farming business, comprising fertile, free draining, sandy soils which are ideal for crop growth. The farm has been handed down for generations. The Fingal County Development Plan recognises the significant tradition of market gardening, specifically Objective RUSH 1. Note the governments Our Rural Future Rural Development Policy 2021-2025. The application of the RZLT designation to these lands poses a significant threat to the local agricultural economy and the survival of long-standing farming enterprise.
- 4.2. The site is not currently served by footpath infrastructure and there are no footpaths available along either the Sundrive Road frontage nor the Hands Lane frontage. Upgrades would have to extend across third party lands. Hands Lane and Sundrive Road are relatively narrow road networks, which do not have sufficient capacity to accommodate significant increase in traffic that may result from any potential development of the land for residential.

4.3. Upgrades required to obtain a wastewater connection.

## 5.0 Determination by the Local Authority

5.1. The local authority stated that land for agricultural or horticultural purposes are not considered to be exempt from scope as they are not subject to rates.

5.2. The local authority determined that the site was in scope and should remain on the map.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The lands are currently in use as a vegetable crop, being a key source of income to the farming business. Land has been farmed for generations. Certified under the Board Bia Sustainable Horticulture Assurance Scheme. Lands comprise sandy, fertile soil, ideal for arable farming practices.
- Implication of the tax will be to make the farm economically unviable.
- There are infrastructural constraints associated with the lands, including absence of any public footpaths serving the site. Upgrades would require works across third party lands. Hands Lane and Sundrive Road are also narrow road networks which do not have sufficient capacity to accommodate a significant increase in traffic.
- The lands are integral to the operation and success of G&M Leonard which supply's locally grown produce to the Rush and North Dublin area.
- The Fingal Development Plan 2023-2029 includes objectives that support the significant tradition of market gardening in Rush, Objective CS058, Policies EEP28, EEP29, EEO78 & EEP30. Inclusion of the lands on the RZLT maps would be catastrophic for the business and would inevitably diminish the economic viability of the same, in turn resulting in the curtailment of the market gardening tradition for Rush.
- Reference to government publication Our Future Rural Development Policy 2021-2025, which highlights the importance of our agricultural sector to local

economies and identifies the lack of profitability as being a significant threat to the sector.

- The legislation provides for instances whereby land may be excluded: 'Land which is zoned for residential uses but is used by a business to provide services to residents of adjacent areas such as a corner shop' and 'land that is zoned for a mixture of residential and other uses where it is reasonable to consider the land integral to the operation of a business carried out on or beside it.' The site ensures continued supply of local, high quality produce, made available to the local community and businesses within Rush and beyond. This supply is comparable to the service that would be operated by a shop.
- The site is not vacant or idle and is in active agricultural use and this was stated by the Finance Minister to provide a reasonable basis for removal of a site from the final RZLT maps.

## 7.0 Assessment

- 7.1. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.
- 7.2. The fact that the lands are in active and established agricultural use does not qualify for omitting the lands from the map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.
- 7.3. With respect to pedestrian footpaths, the local authority does not address this point directly. The site does not appear to benefit from existing public footpaths to either Sundrive Road or Hands Lane, and while the development of the lands might reasonably be expected to include an extent of footpath infrastructure, to connect to

the nearest existing footpaths to this appeal site, would require the creation of significant new sections. The site is situated adjacent to one-off housing which does not have a pedestrian network in place. While the site is to the south of the Town Centre, there is no existing pedestrian network serving areas adjacent to the site. Road upgrades would also interface with third party controlled lands.

7.4. Page 25 of the RZLT Guidelines state that with respect to footpath access:

*“for lands to be considered in scope, there should be an ease of connection to an existing footpath network to facilitate active travel modes from the outset. Provision of significant sections of new footpath across other landholdings, where the land is not in the control of the landowner or local authority should be discounted when considering lands to be in-scope.”*

7.5. It is likely that to create new footpath infrastructure, works would be required on third party lands outside of the ownership of either the appellant or public authority. As such, the site cannot be considered in-scope.

7.6. I note that the site is within a designated Framework Plan area, it is likely that this would provide a strategic overview of development of lands in the area, with a view to unlocking infrastructural matters such as footpath connectivity and road upgrades. However, in the current situation, the local authority has not demonstrated that the site can be easily connected to existing networks across either landowner or local authority controlled lands.

## 8.0 Recommendation

8.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

## 9.0 Reasons and Considerations

9.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, the site is not served by existing pedestrian infrastructure and would require the provision of extensive sections of new footpath to connect to existing

provision, and would cross lands in third party ownership, and as such cannot be considered in-scope for the RZLT.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Rachel Gleave O'Connor  
Senior Planning Inspector

09 June 2023