



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316503-23

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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>	Lower Main Street Yard, Rush, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	RZLT135/22
<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 south of Bawn Road, south east of Lower Main Street. The site is occupied by agricultural sheds and equipment to the front and formed of agricultural land to the rear. It is situated adjacent to residential dwellings and a central open green for the town centre of Rush.

## **2.0 Zoning and other provisions**

- 2.1. Approximately the front half of the site is zoned TC – Town and District Centre, where mixed uses are designated, including residential, while the remaining site area is zoned RS – Residential and primarily for residential use. The site is within the defined Development Boundary for Rush under the Fingal County Development Plan 2023-2029.

## **3.0 Planning History**

- 3.1. No records of any relevant planning history. Application for Horticultural Produce Shed ref. 93A/1312 determined in 1993.

## **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 are part of the farming business, and the structures are currently liable for commercial rates. The section of the site designated for the RZLT does not provide sufficient connection. The land is landlocked, lacking an independent entrance and unconnected to road, footpath and public lighting. Development on the lands would require entry through a busy farm yard which would pose a threat to safety of future residents.
- 4.2. 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.

## 5.0 Determination by the Local Authority

- 5.1. The local authority stated that the lands indicated on the draft RZLT map are those on the southern side of this holding which are zoned RS Residential. 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 for producing crops, and are 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 is no independent access other than the existing access off Bawn Road which is used to service the commercial agricultural farm buildings associated with the Leonard Family Farm. This access is used daily by heavy goods vehicles and tractors and to share with residential use would pose a safety issue.
- 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 to the south is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply. The lands to the north which are zoned TC – Town Centre are zoned mixed use and therefore this exemption applies. The Local Authority confirms that only the southern part of the site zoned primarily for residential use is included for the purposes of the RZLT and the RZLT map confirms this.
- 7.2. The lands to the south zoned primarily residential are in agricultural use. 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.

- 7.3. 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.
- 7.4. 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 the rear and immediately connected to the lands zoned primarily for residential use. Therefore access would be dependent upon connection through the northern section of the land parcel which is zoned town centre and in use as part of the agricultural business. This is lands all within the ownership and control of the landowner (the appellant).
- 7.5. 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.”*
- 7.6. I note the point raised in the appeal grounds that access through the northern portion of the site would not be suitable for residential use, due to the current HGV access associated with the agricultural business, however this does not form a basis for exemption under the Act. The lands through which access could be formed to the residentially zoned lands is within the ownership and control of a single landowner, and as such the lands remain in-scope for the purposes of the RZLT.

## 8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## 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, and the advice in section 3.1.2 of the Guidelines for Planning Authorities

on the Residential Zoned Land Tax, the site (zoned RS - Residential) is considered in scope for the purposes of the RZLT map.

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