



An
Bord
Pleanála

Inspector's Report

ABP-316534-23

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
Location	Old Road, Rush, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT128/22
Appellant(s)	The Flynn Family
Inspector	Rachel Gleave O'Connor

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1.0 Site Location and Description

- 1.1. The site is situated north west of Old Road and formed of two distinct parcels of land situated either side of a residential dwelling. The parcel to the north east of the dwelling appears to form curtilage to the house, while the site to the south west is formed of 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.

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 the lands form part of a family farm.
- 4.2. The site is formed of a portion that is associated with residential occupation, and as such will be registered with the Revenue Commission, and will not be liable to the RLZLT. The western portion of the site is greenfield and part of a wider agricultural practice, the lands relate to sustainable agricultural practices which are a key aspect of the local economy. While note that the guidelines in relation to the RZLT specify that agricultural land is not considered to be exempted from scope, note that these lands relate to sustainable agricultural practices which are a key aspect of the local economy. The RZLT zoning on these lands poses a threat to the local economy of Rush. Reference to the Our Rural Future Rural Development Policy 2021-2025.
- 4.3. The site is not currently served by footpath infrastructure and there are currently no existing footpaths located on Old Road. Significant sections of new footpath would be required across other landholdings which are outside of the landowners control.

4.4. The site does not have access to the wastewater network and significant upgrade works would be required and would be at the expense of the developer.

5.0 Determination by the Local Authority

5.1. The local authority consulted with Uisce Éireann, how confirmed that the site is serviceable for water as a watermain runs along its boundary with Old Road. It is not serviced for wastewater, the nearest sewer is circa 200m to the northeast.

5.2. The local authority states that with respect to the eastern site (residence), with reference to the Act and Guidelines, residential property with a garden / yard than 0.4047ha will be required to register, but not tax is payable, and no action is required by the local authority.

5.3. With regard to the western part of the site which is an agricultural field, the water services report confirms there are services in the vicinity, and it is reasonable to expect such works to be included as part of any future planning application.

5.4. 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 eastern portion of the land is occupied by Drummond House which is a residential dwelling
- The western portion is used for agricultural purposes and provides Rush with locally farmed crops and vegetables, therefore can be considered commercially active lands and out of scope.
- There are known wastewater capacity issues pertaining to the submission lands at Old Road and upgrade works would be required to facilitate a connection between the subject lands and the existing wastewater network located further east along Whitestown Road and Old Road.
- The northern side of Old Road and the road frontage of the submission lands is currently not serviced by a footpath network. Significant new sections of

footpath across our clients lands and adjacent landholdings would be needed. The regular use of farm machinery poses a significant risk to pedestrian safety. There is no connection or possibility of connecting the subject folio to existing footpaths on the northern side of Old Road. Reference to removal of folio no.DN7351 to the north of the appeal site, which was removed from the RZLT maps due to lack of infrastructure.

- The lands are integral to the operation and success of the farming business.
- The Fingal County Development Plan 2023-2029 includes objectives that support market gardening in Rush, reference to Objective CS058.
- Retaining the site on the RZLT maps would diminish the viability of the farm.
- National policy 'Our Future Rural Development Policy 2021-2025' highlights the importance of agricultural 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.

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. With respect to the appeal grounds concerning road infrastructure, the site is accessible from two roads, Hayestown Road and Brook Road, and has significant frontage areas onto these roads. It would be within the normal parameters of a residential development proposition that it undertake upgrades to adjacent roadways and access points to facilitate development of the land. The roads are also within local authority ownership and the RZLT Guidelines confirm on page 23 that the site would be in-scope. With respect to public lighting, networks exist in the area that development of the site, with provision of public lighting, could connect to.
- 7.3. With respect to wastewater infrastructure, Uisce Éireann has confirmed that the site is not serviced, and the nearest sewer is c.200m to the northeast. The local authority does not directly address this issue and concludes that the site can be serviced and should remain in-scope. In my opinion, it would be within the normal parameters of a planning application for residential development to include provision for connection to wastewater networks, and the distance between the appeal site and the nearest sewer would not significant in that context.
- 7.4. With respect to pedestrian footpaths, there are pedestrian footpaths on the corner of Old Road and Whitestown Road to the south of the site, and it would be reasonable to expect an development proposition for the site to include new footpath infrastructure along the site extent. This is then proximate to existing footpath infrastructure to the south of the site on the corner with Whitestown Road. As such, significant new sections are not necessary to connect to existing infrastructure, and works would be on lands within the landowners control, or publicly owned land.
- 7.5. I note the appellants reference to lands to the north which were removed from the map. I cannot comment on the specific circumstances of that site and each appeal is addressed on its own individual merits. In relation to the current appeal site, work that would be required to connect to existing wastewater and pedestrian infrastructure is within the normal parameters of what a development proposition might include, is not significant and can be undertaken over the landowners lands or publicly owned land.
- 7.6. As a result, in my opinion, the site should be considered in-scope.

7.7. 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.

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 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.

Rachel Gleave O'Connor
Senior Planning Inspector

6 June 2023