



An
Bord
Pleanála

Inspector's Report

ABP-316535-23

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	Hayestown Road and Brook Lane, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT133/22
Appellant(s)	Gerry and Michael Leonard
Inspector	Rachel Gleave O'Connor

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1.0 Site Location and Description

- 1.1. The site is located on the corner of Brook Lane and Hayestown Road. It is formed of an agricultural field. To the west and east of the site are agricultural fields. To the north there is agricultural uses and housing, while to the south of the site there is residential dwellings and estates.

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 provided with road access in the form of an agricultural lane that is frequented by heavy farm machinery and poses significant risk to pedestrian safety. Any residential development would result in an extreme intensification of population on the periphery of the existing residential settlement.
- 4.3. The lands are being used for arable purposes integral to business. Residential designation on these lands results in an over intensification of the site which has a substandard road infrastructure.
- 4.4. 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.

- 4.5. Upgrade works would be required to facilitate a connection to the existing wastewater network in the vicinity of the site.
- 4.6. The site does not provide connection to existing services. The only access is via Hayestown Road and is extremely narrow. Significant road works would be required to provide access from Brook Lane, including widening of the carriageway.
- 4.7. Development of the lands would be premature and subsequently contrary to the orderly and sequential development of the town of Rush as there are alternative residential and town centre zoned sites in closer proximity to Rush Town Centre and better served by existing services and infrastructure.
- 4.8. The site is not currently served by footpath infrastructure and there are currently no existing footpaths located on Hayestown Road to the east or Brook Lane to the north. Significant sections of new footpath would be required across other landholdings which are outside of the landowners control. The site is also not served by existing public lighting.
- 4.9. The land is considered to be classified as 'not serviced' and therefore out of scope for RZLT designation.

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. It is considered that the land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses that includes residential development. The land is serviced, or it is reasonable to consider may have access to services.
- 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 site is in use for sustainable farming practices and is family run, and has been for many years.
- The inclusion of the site on the RZLT maps will put an unnecessary financial strain on a nationally important supplier of foods. The lands are integral to the operation of the farming business and livelihood.
- The lands comprise sandy, fertile soil, ideal for arable farming practices.
- Already challenges with profits due to costs for many horticultural enterprises, and the implementation of a residential zoned land tax, on actively farmed lands, will thus inevitably intensify these challenges, and result in sustainable local businesses becoming economically unviable.
- There are infrastructural constraints, including absence of any public footpaths and quality of road infrastructure serving the immediate area.
- The lands are integral to the operation and success of the farming business.
- The Fingal Development Plan 2023-2029 includes a number of objectives which support the significant tradition of market gardening in Rush. Objective CS058. Inclusion of the site on the RZLT maps will diminish the economic viability of the farm and result in the curtailment of market gardening tradition in Rush. Reference to Our Future Our Rural Development Policy 2021-2025.
- 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.
- Only access to the site is via Hayestown Road, which is narrow. A new access could potentially be provided along Brook Lane and would require widening of the carriageway and significant road works.

- The site is not currently served by public footpath infrastructure and no existing footpaths on Haystown Road or Brook Lane, the site is therefore out of scope. Provision of footpath infrastructure on third party lands.
- Other sites in Rush are better situated for services and infrastructure and would reflect more sustainable and sequential development of the town.
- 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. 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 pedestrian footpaths, the local authority does not address this point directly. The site does not appear to benefit from existing public footpaths to either Brook Lane or Hayestown Road, and while the development of the lands might be reasonably be expected to include an extent of footpath infrastructure, to connect to the nearest existing footpaths would require the creation of significant new sections.

- 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 possible that to create new footpath infrastructure, works would be required on 3rd party lands outside of the ownership of either the appellant or public authority.
- 7.6. As a result, in my opinion, due to the extent of new footpath infrastructure required and the uncertainty of whether this would require works in third party lands, the site should not 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 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, there is also uncertainty whether this would require works on 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.

Rachel Gleave O'Connor
Senior Planning Inspector

06 June 2023