



An
Bord
Pleanála

Inspector's Report

ABP-316538-23

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	Lower Main Street, Rush, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT134/22
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 to the north of Lower Main Street associated with the property Kinvarna. To the rear of the property, land is in agricultural land use. It is situated adjacent to residential dwellings in the town centre of Rush.

2.0 Zoning and other provisions

- 2.1. Approximately the front quarter 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.

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 curtilage of a residential property.
- 4.2. The only access point to the lands zoned residential is via the existing site entrance to the existing dwelling located within the southern portion of the site.
- 4.3. The Landowner is already liable for local property tax.
- 4.4. The lands are used for growing crops and integral to the farming business. Lands are fertile.
- 4.5. 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 land used 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.
- The only access point to these lands is via the existing site entrance associated with the existing dwelling on the site. It is narrow and would require significant upgrade.
- 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 north 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 south which are zoned TC – Town Centre are zoned mixed use and in agricultural use, and are therefore not vacant or ideal, and as such this exemption applies.
- 7.2. The lands to the north 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 access, the local authority does not address this point directly. The site is immediately adjacent to an existing residential estate at Seafield Court, which has a road that terminates at the boundary to the appeal site. This could be

connected into by a development proposition for the site. Access could also be through connection via the southern section of the land parcel which is zoned town centre and is adjacent to an existing residential dwelling. 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 southern portion of the site would require significant upgrade, however this would be a normal requirement of any development proposition. 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. There is also potential to access via the Seafield estate to the west of the site which would be via local authority controlled lands.

8.0 Recommendation

8.1. I recommend that the Board confirm the determination of the local authority in part, and direct the local authority to include the part of the site zoned RS Residential on the map. The part of the site zoned TC Town Centre should be removed as it is in use and not vacant or idle.

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.

Rachel Gleave O'Connor
Senior Planning Inspector

09 June 2023