



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316675-23

#### 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

"Colemans", Palmer Road, Rush, Co. Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

RZLT138/22

#### Appellant(s)

P+N Butterly Ltd.

#### 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 Palmer Road, west of residential estates and south of St. Catherine's National School. To the south and west of the site are agricultural fields. The site 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. There is also a specific objective to protect & preserve trees, woodlands and hedgerows on the site.

## **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 used as a 4<sup>th</sup> generation family run farm. There is a small, outdoor, Bord Bia accredited fruit and vegetable shop on the Main Street of Rush serving the town and people from the wider Fingal area. Currently pay commercial rates on the yard on which this stall is located. The lands at Palmer road are subject to the RZLT however this land is directly involved in the production of the vegetable crops that are sold both locally and at the shop on Rush Main Street. These lands are not lying idle, they are essential to the small business. It is not financially viable to pay the tax and would led to a cease of trading. Have a record of supporting a number of local community groups and sporting organisations.

## **5.0 Determination by the Local Authority**

- 5.1. The local authority consulted with Uisce Éireann, who confirmed that the site is not currently serviced for water. The nearest watermain is approximately 200m to the east along Palmer Road. This would be developer led. Depending on the size of any

future development, local upgrades may be required. With respect to wastewater, the site is not currently serviced. It could be 220m to the nearest suitable sewer for full development of the site. The water services report for the local authority states that there are services in the vicinity and it is reasonable to expect such works to be included as part of any future planning application.

5.2. 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.

5.3. 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 has not been tested for services, but it is assumed that there are services available to the site.
- The lands have been in the ownership of the appellant family for 30+ years. The Butterly family's main business is farming primarily growing fruit and vegetables for sale in their local shop and for wholesale supply to some of the largest national grocery retailers.
- Not intended to develop the lands.
- The consequences of application of the tax to these lands cannot be underestimated.
- There is sufficient activity in the construction sector locality to meet the housing needs of the area and its environs.
- The land in question does not have full access to services. The upgrade of the Palmer Road has not happened and as such it is completely unrealistic that any form of residential development will be permitted on these lands unless significant infrastructure upgrade works are carried out Fingal County Council – which is not happening. There is no public footpath, public lighting or significant drainage that benefits the site and it is completely unsafe for pedestrians at present.

- Also question the capacity of any of the existing services to facilitate any form of significant development. It is completely unclear that following a sequential approach to the development in the area any form of planning application would be considered on these lands, which are peripheral to the Village of Rush and its environs completely rural in nature.

## 7.0 Assessment

- 7.1. 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 services, it would be necessary to upgrade Palmer Road to include footpaths along the frontage of the site. There is existing footpaths which commence to the east of the site associated with the residential estates for Palmer Avenue. There is a land parcel between the appeal site and these estates, and it is not clear what the landownership of that parcel is. To the south of that adjacent land parcel, there is a small extent of inconsistent footpath already in place, but this terminates to the frontage of a private residents and does not align with existing footpaths for Palmer Avenue opposite. Due to the situation of the site adjacent to a land parcel where ownership is unknown, and the inconsistent nature of existing footpath opposite this, it would be necessary to carry out upgrades along the edge of the adjacent land parcel that may be in third party ownership, in order to connect in with existing pedestrian infrastructure to the east. There is no existing pedestrian infrastructure which could be connected into to the west. The provision of upgrades to roads, footpaths and provision of public lighting is all within the normal proposition that would be attached to a development proposals, however the RZLT guidelines state on page 25 that:

*‘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.’*

- 7.3. As there is uncertainty as to the landowner control of the land parcel between the appeal site and the existing residential estates at Palmer Avenue, which any

upgraded pedestrian/road infrastructure along Palmer Road would need to connect into, the lands cannot be considered in-scope for the RZLT maps.

- 7.4. With respect to capacity, Uisce Éireann's water supply and waste water capacity registers show capacity for the Rush area.
- 7.5. Considerations of sequential development and growth of the area do not form a legitimate basis for exemption under the Taxes Consolidation Act 1997 (as amended).
- 7.6. 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.
- 7.7. Overall, it has not been demonstrated by the Local Authority that the site can be serviced by pedestrian/road infrastructure with upgrades only across the lands in control of the landowner or the local authority.

## **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 upgrades to connect to existing provision, there is 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.

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Rachel Gleave O'Connor  
Senior Planning Inspector

09 June 2023