



An
Bord
Pleanála

Inspector's Report

ABP-316686-23

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	Brook Lane, Hayestown, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT086/22
Appellant(s)	James Flynn
Inspector	Rachel Gleave O'Connor

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1.0 Site Location and Description

- 1.1. The site is located to the south of Brook Lane and north of properties that front Old Hayestown Road. Access to the site is from Brook Lane. To the east, west and north of the site is agricultural land, and the site itself is formed of agricultural fields.

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 for the appeal site. One application relating to greenhouse installation F97A/0946).
- 3.2. Adjacent site to the west ('Greenbrock')
- 3.3. F17A/0739 – Permission GRANTED in September 2018. The development will comprise: (a) the construction of 22 no.3 bedroom semi-detached 2 storey houses, 2 no.3 bedroom, detached 2 storey houses,6 no.4 bedroom, semi-detached 2 storey houses, and 6 no.2 bedroom terraced 2 storey houses in two blocks (36 dwelling units in total); (b) the construction of a new access road (cul-de-sac) and footpaths off Brook Lane and all associated boundary treatment works; (c) provision of 1298 m² open space area; (d) construction of an ESB substation; (e) construction of underground sewer pumping station; (f) all associated site works.
- 3.4. F19A/0320 – Permission GRANTED in February 2020 for alterations to already approved development Reg. Ref. F17A/0739, comprising:
 - (a) Minor alterations to house types and 5 no. additional houses as follows: (i) 2 no.4 bedroom 2 storey semi-detached houses in lieu of 4 no. 4 bedroom 2storey semi-detached houses; (ii) 38 no. 3 bedroom 2 storey semi-detached houses in lieu of 31 no. semi-detached, end & mid terrace houses (from 35 to 40 dwelling units in total);
 - (b) New gravity foul main to connect into existing manhole to the east of the site and adjacent to Seabrook at Brook Lane and omission of pumping station,

(c) Associated alterations to internal road layout and relocation and reduction in public open space;

(d) All associated site works; all on this 1.292ha site on the south side of Brook Lane Haystown Rush Co Dublin (opposite Daffodil Stores glass houses)

- 3.5. F21A/0016 – Permission GRANTED in March 2021 for the reduction in the ridge height of all house types (A1, A2, A3 & B1) by 1.35m previously granted planning permission under Reg, Ref. F17A/0739 and F19A/0320 comprising 40 no. dwellings and associated site development works.

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 land is occupied by 7,000sqm of heated glasshouses where they produce tomatoes, reducing the need for imports of the same. It is a family business running for 50 years. The business has invested in this location and it cannot be easily replaced elsewhere. It is not possible to relocate the business due to a lack of suitable sites, rebuilding of necessary infrastructure and the costs involved. The RZLT will be detrimental to the business and livelihood.

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.
- 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 land is not vacant or idle.
- Enforcing the tax will bankrupt the business.

- Costs of relocation and building infrastructure would exceed any payment for the property.
- The site should not be considered development land as its current use value exceeds the open market value. Reference to section 3.1.2 of the RZLT Guidelines.
- The product from the site are utilised by a residential community on a daily basis, and should therefore be exempt.
- Food Vision 2030 aims to provide Irish produce to the Irish Market, this initiative is in contrast to the tax.

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. The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines. 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.
- 7.3. While the appeal grounds do not raise the matter of footpaths, I note that there is no existing footpath infrastructure in front of the site on Brook Lane. To the west of the site, the 'Greenbrock' development includes new footpath infrastructure to its frontage to Brook Lane which a development proposition on the appeal site could reasonably connect into. However, this would not provide connection into the wider

footpath network for the area, and to connect into the wider existing footpath network would require the creation of new sections across adjacent land frontages to Brook Lane.

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, the site should not be considered in-scope as to connect into the footpath network for the area, it would require works across land frontages which may be within third party control.

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. The land is not connected to the existing footpath network in Rush and would require the provision of significant sections of new footpath across other landholdings where land is not in the control of the landowner or local authority. The land, therefore, does not satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

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

23rd June 2023