



An
Bord
Pleanála

Inspector's Report ABP-316704-23.

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 Map
Location	5, Leinster Street, Athy, Co. Kildare
Local Authority	Kildare County Council
Local Authority Reg. Ref.	KCC-C108-40
Appellant	Bluetrack Property
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site, with an area of 0.07ha, comprises a linear strip of land which fronts Leinster Street within the town centre of Athy. The site forms part a larger landholding to the rear, also in the appellants ownership (which are subject to a separate appeal Ref. ABP 316995-23). The surrounding land use includes a mixed used developments including residential.

2.0 Zoning

- 2.1. The site is zoned 'new residential' in the Athy Local Area Plan 2021 - 2027 under objective A, 'Town Centre' M2, with a stated objective "To protect, improve and provide for the future development of the town centre".
- 2.2. It is noted that residential development is 'permitted in principle' under this land use zoning objective.

3.0 Planning History

- 3.1. Ref. 19968: An extension of duration of permission was refused for planning reference 07/300058 by Kildare County Council on the 17/10/2019. The reason for refusal stated that the development had not commenced on site, substantial works had not been carried out and the development was subject to an Environmental Impact Assessment before the permission was granted. As such, the planning authority were precluded from granted a further extension of the appropriate period of planning reference 07/300058.
- 3.2. Ref. 14/300003: An extension of duration of permission was granted for planning reference 07/300058 by Kildare County Council on the 15/05/2014.
- 3.3. Ref: 07300058: Conditional planning permission granted by Kildare County Council and decision to grant permission upheld by An Bord Pleanála (ABP reference could not be located at time of writing report) for the construction of a mixed-use development including retail, commercial and residential uses (total no. of dwelling units is 87) and a multi-storey car park at 3, 4 & rear of 5-17, Leinster Street, Athy.

4.0 Submission to the Local Authority

- 4.1. The appellant submits that the property is rateable.
- 4.2. The Athy Local Area Plan, 2021-2027, sets out objectives for a new street to be constructed to the rear of the property and no development can take place until this has been constructed by the local authority.
- 4.3. As such the appellant requests that the lands are removed from the Draft RZLT Map.

5.0 Determination by the Local Authority

- 5.1. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial Guidelines "Residential Zoned Land Tax – Guidelines for Planning Authorities" for inclusion on the RZLT Map.
- 5.2. The subject lands are zoned 'town centre' in the Athy Local Area Plan 2021 – 2027. The land use matrix of the Athy Local Area Plan states that dwellings are 'permitted in principle' within the Town Centre zoning.
- 5.3. It is considered that the lands that are the subject of the submission are currently vacant or idle; as provided in the guidelines, 'vacant or idle land' means land which, having regard on to development (within the meaning of the Act of 2000), which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

6.0 The Appeal

6.1. Grounds of Appeal

- The property is rateable, and rates are being paid yearly.
- It is an objective of the Athy Local Area Plan 2021 – 2027, that a new street be constructed through the rear of this property. No development can take place until this has been constructed by the local authority.

7.0 Assessment

- 7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. As per the Athy Local Area Plan 2021 – 2027, the subject site is zoned ‘objective A’, ‘Town Centre’, and while the primary land use is to provide for the future development of the town, residential use can also be considered under this zoning objective.
- 7.2. Section 3.1.2 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, describe permissible exclusions from the map, including where land located within mixed use zones, which permit a variety of uses including residential, should only be considered to be in scope for the tax where they are vacant or idle. The subject site is zoned for mixed use, including residential. Kildare County Council in their assessment state, as a matter of fact, that the site is currently vacant/idle and is not required for or integral to the operation of a trade or profession being carried out. This statement has not been contradicted by the appellant in the subsequent appeal. As such, the property is considered to be vacant/idle and, therefore, the site falls within scope of the land use zonings applicable to the RZLT.
- 7.1. The Guidelines also state in respect of operating uses on mixed use zoned lands:
“With reference to land that is included in a development plan or local area plan and is zoned for a mixture of uses, including residential such as TC-Town Centre, DC-District Centre, RE Regeneration, LC-Local Centre and RV-Rural Village, all land should be excluded from the map unless is it considered ‘vacant or idle’. ‘For clarity, lands on mixed use zonings only fall into scope where residential development is a ‘permitted in principle’ use in that zoning.”
- 7.2. While the property may be liable for commercial rates, Kildare County Council in their assessment state, as a matter of fact, that the site is currently vacant/idle. As such, the site is not required for or integral to the operation of a trade or profession, which provides services to residents of adjacent residential areas. Therefore, I consider the site does not satisfy the criteria for exclusion from the map as set out in section 653B (c) (i) of the Taxes Consolidation Act 1997 as amended.

7.3. The appellant refers to specific objectives in the Athy Local Area Plan 2021 – 2027, specifically that a new street be constructed through the rear of this property. The Athy Local Area Plan provides an illustration as to how a revitalised Athy Town Centre would function and highlights the specific objectives for consideration as part of any development(s) within the town. However, I do not consider that the objectives in the Athy Local Area Plan 2021 – 2027, would preclude the provision of dwellings on the site, as per section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

8.1. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as KCC-C108-40 on the map.

9.0 Reasons and Considerations

9.1. The appellant requested that their site be removed from the map due to the fact that the property is rateable, and that no development can take place until such time that the new street to the rear of the property, as highlighted as an objective of the Athy Local Area Plan, 2021 – 2027, is constructed by the local authority.

9.2. 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 the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022. The lands as identified KCC-C108-40 are considered in scope of section 653B of the Taxes Consolidation Act 1997, as amended,

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Emma Nevin
Planning Inspector

23rd August 2023