



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316721-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Park Road, Rush, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	RZLT087/22
<b>Appellant(s)</b>	James Flynn
<b>Inspector</b>	Rachel Gleave O'Connor

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## 1.0 Site Location and Description

- 1.1. The site is located to the west, and accessed from, Park Road. The site immediately abuts agricultural lands to the north, south, east and west, with existing residential dwellings and estates to the west. The site is formed of agricultural fields with a portion occupied by glasshouses.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned RA – Residential Area 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. Previous planning applications on the site relate to telecommunications and glasshouses across a wider site area (Reg. Ref. F95A/0633, F97A/0941 & F96A/0100).
- 3.2. Wider Area – Upgrades to Park Road:
- 3.3. F15A/0294 – Permission GRANTED on 1<sup>st</sup> February 2016 for Infrastructural site development works including roads, footpaths, cycleways, drains, sewers, watermains, surface water attenuation areas, below ground pumping station (with 2 no. above ground control kiosks) and rising main discharging to the Channel Road sewer system, below and above ground utilities, landscaping works, boundary treatment and all ancillary infrastructure and site development works to facilitate future housing on the subject lands. The development also includes demolition of existing glasshouses and existing cottage (in ruins - at north section of Park Road), widening of approx. 356m. of Park Road (south from St. Maurs GAA Club), a new sewer along widened roadway and for a further 110m. on Park Road, new vehicular and pedestrian access off Park Road and the section of the North/South Urban Road to be constructed under this proposed development, construction of new junction on Brook Lane (at its intersection with the proposed North/South Urban Road), decommissioning and removal of existing temporary wastewater treatment plant (on land to the east of Sea Brook housing development) and existing pumping station (near entrance to Brookford housing development) and connecting its existing

sewers to the proposed foul sewer system and all other site development works. All on lands within and adjoining KENURE (Rush) Local Area Plan lands in accordance with agreed Phase 1A conceptual framework/Master Plan. The total site area of the application is 8.53ha comprising of: (A) Site No. 1 - 6.038ha plot of land bounded by Sea Brook housing development to the west, Brook Lane and Brookford housing development to the south and agricultural fields/Woodland Park to the north and east; (B) Site No. 2 - 0.766ha plot of land bounded by Park Road to the east and agricultural fields to the north, south and west; (C) Site No. 3 - 1.005ha plot of land bounded by Park Road to the west, Kenure Lawns to the south and agricultural fields to the north and east; (D) Link road between Brook Lane and Park Road - 0.271ha plot of land bounded by Park Road to the south, Brook Lane to the north, Brookford Park housing development to the west and private houses to the east; (E) - 356m of Park Road south from St. Maurs GAA Club, Rush, Co. Dublin.

#### **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 4,000sqm of heated glasshouses. 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 products 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 linking the site to Park Road.
- 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 would be reasonable to expect any development proposition for the site to include new footpath and road upgrades to connect into existing networks. This would involve linking the site to Park Road, and the appellant indicates in submitted land register documentation that their ownership extends along the access route from the site to Park Road, indicating control of this land access, and therefore there is potential to undertake upgrades along this section. Works would also then be required on Park Road and there is sufficient grass verge to the side of the road, which appears in local authority ownership, and could be upgraded to pedestrian footpath as part of a development proposal for the site and connect into existing pedestrian infrastructure further south for Woodland Park. I also note approved upgrade works to Park Road that would include footpath infrastructure that would also facilitate access to the site.
- 7.6. As a result, I am of the view that the site can be serviced, and there is ease of connection to existing pedestrian infrastructure across landowner and local authority controlled lands.

## **8.0 Recommendation**

- 8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## **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 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.

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Rachel Gleave O'Connor  
Senior Planning Inspector

23<sup>rd</sup> June 2023