



An
Bord
Pleanála

Inspector's Report ABP-316726-23

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

Lands at Kilcullen Road, Naas West, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

KCC-C108-46

Appellant(s)

Matthew Purcell

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject site located in the townland of Naas West, Co. Kildare, on the southern outskirts of Naas town, is broadly triangular in configuration, is located west of the R448 Kilcullen Road, south of the residential development of Rathasker and east of the Whitethorn residential development. The Southern Naas Ring Road bounds the site to the south. The lands are under grass.
- 1.2. The subject site forms part of the southern part of Land Parcel ID KELA00001182 on the draft RZLT map. There is a concurrent RZLT appeal by William Purcell (ABP 316728-23) for lands which immediately adjoin the subject site to the north and which also forms part of the southern part of Land Parcel ID KELA00001182.

2.0 Zoning and Other Provisions

- 2.1. The lands are zoned B – ‘Existing / Infill Residential’ with the objective ‘To protect and enhance the amenity of established residential communities and promote sustainable intensification’ in the Naas Local Area Plan 2021-2027, which came into effect on 1st December 2021.
- 2.2. It is considered the site is not affected by issues to a sufficient extent which would preclude the provision of development, including contamination or the presence of known archaeological or historic remains.
- 2.3. The site is not located within an Architectural Conservation Area (ACA).

3.0 Planning History

- 3.1. There are no recent, relevant or valid applications on the subject lands.

Submission to the Local Authority

- 3.2. The appellant made a submission to the Local Authority seeking to have the subject lands removed from the draft map on the basis that they have been used for grazing livestock on a long-term basis and should be zoned for agricultural use.

4.0 Determination by the Local Authority

4.1. The Local Authority determined that the site is in scope. The site is zoned for residential development in accordance with the Naas Local Area Plan 2021 – 2027. It is reasonable to consider the lands are serviced or have access to services necessary for dwellings to be developed and for which there is service capacity available. The landowner has not made a request to rezone the lands for agricultural use.

5.0 The Appeal

5.1. Grounds of Appeal

The following points were made in support of the appeal:

- The report prepared by the Local Planning Authority relating to the appellant's initial submission concerning inclusion of the site on the RZLT map was not provided to the appellant upon request.
- Refutes that no request was made to rezone the land and refers to appellant's submission of 1st January 2023 in this regard, which stated the site should be zoned agricultural, in line with the appellant's land on the southern side of the Ring Road.
- The land is used for agricultural purposes and comprises exempted development.
- Not possible to construct a new access into the site to serve a housing scheme.
- This is a penal tax and its imposition would be repugnant to the Constitution.
- The physical characteristics of the site including its size, shape and location proximate to the Ring Road would preclude development potential and the land would not meet the criteria of section 653B of the Taxes Consolidation Act 1997, as amended.
- Not all zoned residential land can be developed. Reference is made to refusal of permission for a proposed development on lands proximate to the subject site (PL09.307340 refers).

- Provision is made for a greater quantum of zoned residential land in Naas than is needed.

5.2. Planning Authority Response

- No response on file

6.0 Assessment

- 6.1. The comments raised in the appeal are noted, as is the report of the Planning Authority which was received by An Bord Pleanála.
- 6.2. The site identified for inclusion on the RZLT map is zoned for residential use and the Local Planning Authority determined that the site remain on the RZLT map.
- 6.3. I note the comments made in reference to the agricultural use of these lands, however there are no exemptions from inclusion on the RZLT maps on the basis of the land being used for agricultural purposes.
- 6.4. Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. The legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I.
- 6.5. Compliance with the provisions of section 653I does not therefore fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.
- 6.6. I am of the view that the land satisfies criterion 653B (b) and that it is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development. As such the lands could have development potential.
- 6.7. I am of the view that the lands are not affected by issues to a sufficient extent which would preclude the provision of development and therefore I consider that the lands satisfy criterion 653B (c) of the Taxes Consolidation Act 1997, as amended.

7.0 Recommendation

- 7.1. I recommend that the board confirm the determination of the Local Authority and that the indicated site be retained on the map.

8.0 Reasons and Considerations

- 8.1. The appellant requested that their lands be removed from the map based on a number of factors, including that its physical characteristics would preclude the provision of dwellings and that the land is used for agricultural purposes.
- 8.2. The site is within an area zoned for residential use that is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development. The site does satisfy the criteria for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my professional 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.

John Duffy
Planning Inspector

28th August 2023