



An  
Bord  
Pleanála

## Inspector's Report ABP-316728-23

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**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, Co. Kildare

**Planning Authority**

Kildare County Council

**Planning Authority Reg. Ref.**

KCC-C108-49

**Appellant(s)**

William 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 rectangular in configuration, fronts onto the R448 Kilcullen Road and is located immediately south of the residential development of Rathasker and east of the Whitethorn residential development. The Southern Naas Ring Road runs south of the site. The front / eastern part of the site accommodates a large detached 2 storey house. There are also a small number of agricultural buildings on the lands.
- 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 Matthew Purcell (ABP 316726-23) for lands which immediately adjoin part of the subject site to the south and which also forms part of the southern 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 1<sup>st</sup> 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 their lands removed from the draft map on the basis that they are not serviced (other than the appellant’s house on the site, which is subject to the Local Property Tax) and are in 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.

## 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.
- The land is used for agricultural purposes and comprises exempted development.
- Imposition of the tax is abhorrent and would be repugnant to the Constitution.
- Due to the physical characteristics of the site, including its limited size, elongated configuration and location near the Ring Road, it has no development potential and would not meet the criteria of section 653B of the Taxes Consolidation Act 1997, as amended.
- It may not be legally possible to develop the lands for residential purposes.
- The site accommodates the family home and the Local Property Tax (LPT) is payable.
- Section 653O of the Act prescribes that residential properties on sites greater than 0.4047 ha are not liable for any tax. This exemption applies to the subject lands.
- Not all residential zoned land can be developed as evidenced by a decision made in relation to 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.
- The appeal site is not serviced in terms of vehicular access. Access to the lands cannot be achieved from adjoining developments or the Naas Ring Road.

## 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. 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.
- 6.5. I do not accept that the characteristics of this site would preclude the provision of dwellings. 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.
- 6.6. The liability for LPT or RZLT is a matter for the Revenue Commissioners to address and is not a function of the assessment stage of the appeal process.
- 6.7. The site is situated in the curtilage of a residential property. The residential property is liable for local property tax. The appellant has indicated that the site is in excess of 0.4047 hectares. The RZLT Guidance states on page 6 that:

*Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 6530(1)(a) of the legislation). While **residential properties, the associated curtilage of which exceeds 0.4047 ha are also not liable for the tax** (see section 6530(2) of the legislation), **owners of such properties must register for the RZLT and provide certain information to the Revenue Commissioners.** This does not require any action on the part of the Planning Authority. (emphasis added).*

As the appeal site forms part of the curtilage of a residential property, it is not considered a 'site' for the purposes of the RZLT, however this does not mean that the lands are removed from the map and no action is required of the Planning Authority. The landowner (appellant) must register for the RZLT and provide information to the Revenue Commission, to demonstrate that the tax will not be payable.

## 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 it is not serviced, that the land is used for agricultural purposes and that the land accommodates the family home on which the LPT is paid.
- 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.

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John Duffy  
Planning Inspector

28<sup>th</sup> August 2023