



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316738-23

---

<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>	RZLT103/22
<b>Appellant(s)</b>	Joan Flynn & David Flynn
<b>Inspector</b>	Rachel Gleave O'Connor

## Contents

1.0 Site Location and Description .....	3
2.0 Zoning and other provisions .....	3
3.0 Planning History.....	3
4.0 Submission to the Local Authority.....	3
5.0 Determination by the Local Authority .....	3
6.0 The Appeal .....	3
7.0 Assessment.....	5
8.0 Recommendation.....	6
9.0 Reasons and Considerations.....	6

## **1.0 Site Location and Description**

- 1.1. The site is located to the west of Park Road and adjacent to existing residential estates at Kenure and Woodland Park. The site is immediately adjacent to an existing vehicular entrance off Park Road.

## **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).

## **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 lands are used commercially as part of a vegetable business. Bord Bia Sustainable Horticulture Assurance Scheme – Bord Bia Producer number submitted in support.

## **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**

- It is not considered that the requisite infrastructure services or community/social services have been provided in the Kenure Area in accordance with the Phasing schedule set out within the 2009 Rush Kenure Local Area Plan to support the development of the subject lands.
- The Rush Kenure LAP 2009 which was in effect until February 2019 very clearly outlines that the development of the plan lands shall take place on a phased basis.
- The delivery of class 1 public open space and new post primary school do not appear to have been delivered to date.
- No detailed plans for the delivery of the cycle network indicated on the zoning map.
- The lands are integral to the operation and success of Forane Nurseries which supply's locally grown produce to the Rush and North Dublin area.
- The Fingal Development Plan 2023-2029 includes objectives that support the significant tradition of market gardening in Rush, Objective CS058, Policies EEP28, EEP29, EEO78 & EEP30. Inclusion of the lands on the RZLT maps would be catastrophic for the business and would inevitably diminish the economic viability of the same, in turn resulting in the curtailment of the market gardening tradition for Rush.
- Reference to government publication Our Future Rural Development Policy 2021-2025, which highlights the importance of our agricultural sector to local economies and identifies the lack of profitability as being a significant threat to the sector.
- The legislation provides for instances whereby land may be excluded: 'Land which is zoned for residential uses but is used by a business to provide services to residents of adjacent areas such as a corner shop' and 'land that is zoned for a mixture of residential and other uses where it is reasonable to consider the land integral to the operation of a business carried out on or beside it.' The site ensures continued supply of local, high quality produce, made available to the local community and businesses within Rush and

beyond. This supply is comparable to the service that would be operated by a shop.

- Site is not serviced by a footpath.
- The site is not vacant or idle and is in active agricultural use and this was stated by the Finance Minister to provide a reasonable basis for removal of a site from the final RZLT maps.
- Bord Bia Certificate for Horticulture provided.

## 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 refer to the Rush Kenure Local Area Plan 2009 extended to 2019. The Fingal County Development Plan 2023-2029 includes in table 2.15 on page 56 a list of operational LAPs for the county, and the now expired Rush Kenure LAP is not included. As a result, the phasing requirements referred to by the appellant are not applicable to the site.
- 7.3. With respect to the delivery of cycle infrastructure, this alone would not be sufficient to justify removal from the RZLT map. The delivery of the Greater Dublin Area Cycle Network is part of a much larger county wide infrastructure project. Where the GDA Cycle Network is indicated to pass through the subject site and as designated on the zoning map, it would be reasonable to require any future development proposal of the site to facilitate the delivery of this portion of the network. I also note that the RZLT Guidelines do not include the lack of cycle infrastructure as an exemption.

- 7.4. With respect to pedestrian infrastructure, while site frontage onto Park Road does not benefit from footpaths currently, I note that the nearby existing residential estates do, including Kenure Lawns opposite the site and Woodland Park to the south. There is sufficient grass verge to the side of Park Road south of the site, which appears in local authority ownership, which 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. The frontage of the site onto Park Road and in the landowners control could also be upgraded to facilitate pedestrian connection. To the south of the site, this would involve the relocating of street trees, but would be an entirely normal proposition for a development proposal to facilitate connectivity. Therefore, I agree with the Local Authority that the site can be serviced, and there is ease of connection to existing pedestrian infrastructure across landowner and local authority lands.
- 7.5. 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.

## **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.

---

Rachel Gleave O'Connor  
Senior Planning Inspector

09 June 2023