



An
Bord
Pleanála

Inspector's Report ABP-316760-23.

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 The Orchard, Sallins Road, Naas, Co. Kildare
Local Authority	Kildare County Council
Local Authority Reg. Ref.	KCC-C108-58
Appellant	Springwood Limited
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site, with an area of 2.83ha, is located at Sallins Road, Naas. The site is located to the west of the Sallins Road (R407) and to the south of the Naas Gaa Club Complex. The 'Oldtown Demense House' and associated lands are located to the west and south of the site.

2.0 Zoning

- 2.1. The site is zoned both objective B 'Existing Residential/Infill' and objective C 'New Residential', in the Naas Local Area Plan 2021 – 2027.
- 2.2. Objective B 'Existing Residential/Infill' has a stated objective; *"To protect and enhance the amenity of established residential communities and promote sustainable intensification"*.
- 2.3. Objective C 'New Residential' has a stated objective; *"To provide for residential development"*.

3.0 Planning History

There is an extensive planning history on site, regard is had to the following relevant planning history:

Ref: 211740 – Conditional planning permission was granted by Kildare County Council on 10th December 2021 for a residential development of 50 no. units that will tie in to the existing permitted "The Orchard" Housing Development at Oldtown Demesne, Sallins Road, Naas, Co. Kildare, comprising houses and apartments, all associated site development works including landscaping, surface car parking, access roads, footpaths, boundary walls, bin storage and bicycle storage areas.

Ref: 20587 – Conditional planning permission was granted by Kildare County Council on 10th June 2020 for the erection of 3 storey Apartment Block comprising 2no. 3 Bedroom Apartments and 7no. 2 bedroom Apartments in lieu of previously approved Apartment Block, "Garden View", comprising a 2 storey Apartment Block with 4no. 2 Bedroom Apartments and all associated site development works including hard landscaping surface, road, footpaths, additional car parking, bicycle

parking, bin store, soft landscaping spaces and connection to all services including foul sewer, water mains, surface water, ESB, associated utility services and lamp standards.

4.0 Submission to the Local Authority

- 4.1. The appellant submits that all residential units have been completed on site and should be excluded from the RZLT Map and that these units are no longer in the ownership of Springwood Ltd.
- 4.2. The only lands for inclusion in the RZLT Map should be the lands contained in PL. Ref. 20/587, part of the original site and 21/1740 lands contained in Folio KE72954F.

5.0 Determination by the Local Authority

- 5.1. The subject land is included in the Naas Local Area Plan 2021 – 2027 and is zoned objectives ‘B’ and ‘C’ for residential development.
- 5.2. The land is serviced, or it is reasonable to consider may have access to services necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.
- 5.3. Section 653H of the legislation provides that residential developments under construction are considered ‘in scope’ in their entirety until such time as the development is completed and any ineligible areas of the site such as roads/footpaths/verges, permitted open spaces or other community services/infrastructure can be identified and removed from RZLT Map as part of the annual review to be carried out by the planning authority.
- 5.4. In relation to the part of the subject lands where residential has been completed, it is noted that Section 3 of the 2022 Section 28 Ministerial Guidelines ‘Residential Zoned Land Tax – Guidelines for Planning Authorities’ states that *“Land which is zoned residential and contains existing residential development such as estates or individual house 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 653O(1)(a) of the legislation”*.

5.5. 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.

6.0 The Appeal

6.1 Grounds of Appeal

The appellant raised similar issues to those in the submission to the local authority including:

- The first part of the appeal relates to the existing zoned residential land use which is currently considered unregistered land and the other part relates to the new residential zoned land use which is registered land and is contained within Folio KE72954F.
- The appellant states that it is clear that all residential units have been completed on the ‘Existing Residential Land Use’ part of The Orchard Site, which are unregistered lands. The “BCM’s” (Building Construction Management) of these residential units will be completed before 31st December 2023. This section of ‘The Orchard’ site containing the Existing Residential Land Use should be excluded from the proposed Residential Zoned Land Tax Map, as these residential units will no longer be in the ownership of Springwood Limited at that date, hence there will be no tax due on this portion of the site.
- In relation to the ‘new residential ‘ zoned land the appellant states that having regard to the fact that construction works have commenced on site on foot of planning permission 211740, this site should be removed as there will be no Residential Zoned Land Tax due.

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. While two zoning objectives pertain to the site, the site is zoned for residential development under zoning objectives 'B' and 'C'.

- 7.2. I refer to Section 3.3.2 Restriction to Considering Criteria for Inclusion, of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which states *“In assessing any appeal, the Board is restricted to considering whether the land meets the qualifying criteria set out in section 653B only”*. The Board is restricted in its determination of the appeal to the criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended. As such, landownership does not fall within the said criteria.
- 7.3. Furthermore Section 4.1.1 'Considerations (vii) Matters which do not need to be considered', of the Guidelines state; *“Issues relating to land ownership or the market value of the land are not required to form part of consideration in undertaking the draft, supplemental or final map review as these matters are dealt with by the Revenue Commissioners once the maps have been finalised”*.
- 7.4. With respect to the planning permission and commencement of development on site, again I note that is not a criterion for consideration by An Bord Pleanála under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.5. I also refer to Section 3.2.3 'Consideration of Submission on Inclusion on Maps' of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, states; *“Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions. Furthermore, the size of the landholding, ownership of the land by private, public or semi-state bodies, lack of knowledge of ownership or transfer of ownership should not be considered”*.
- 7.6. I consider that the site is suitably zoned and serviced to allow for residential dwellings and as such, the site can be considered in scope for the RZLT maps.

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-C108-58 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. The lands as identified KCC-C108-58 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

6th September 2023