



An
Bord
Pleanála

Inspector's Report ABP-316943-23.

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
Location	Graiguecullen, Carlow, Co. Laois
Local Authority	Laois County Council.
Local Authority Reg. Ref.	LS-C46-RZLT-14
Appellant	Bruce & Barbara Fennell
Inspector	Irené McCormack

1.0 Site Description

1.1. The site comprises 4.75ha. of lands at Graiguecullen, Carlow, Co. Laois.

2.0 Zoning

- 2.1. The land is zoned R2 - Residential 2 in the joint LAP for the Carlow / Graiguecullen 2012 (extended).
- 2.2. R2 Zoning Objective - *To provide for new residential development, residential services and community facilities.*
- 2.3. The extant Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 expired on 4th November 2022.
- 2.4. Issues Paper for the Carlow-Graiguecullen Joint Urban Local Area Plan 2023- 2029 was prepared in September 2022. Pre-draft consultation was undertaken from 16th September 2022- 12th October 2022. Following this, a Draft Local Area Plan was to be prepared and published in Q1 of 2023 and the Carlow Graiguecullen Local Area Plan adopted Q3/4 of 2023. To date no LAP has been prepared.
- 2.5. The Laois County Development Plan 2021-2027 was adopted on 25th January 2022 and came into effect 8th March 2022.
- 2.6. Section 2.10.1.2 Graiguecullen of the CDP 2021-2027 states: -
- 2.6.1. Graiguecullen is designated as a Key Town in the RSES. A joint LAP for the Carlow / Graiguecullen area was prepared in 2012 and further extended up to and including 22nd October 2022 after which time a new Joint Spatial Plan will be prepared for the Greater Carlow Graiguecullen Area in conjunction with Carlow County Council which will align with the policy provisions of the EMRA RSES and the Southern Regional Assembly RSES in order to comply with RPO 4.75.
- 2.6.2. The vision for the Greater Carlow Graiguecullen urban area is as follows:- “A high-functioning, inclusive, compact and accessible greater urban area, underpinned by a robust and diverse local economy comprising retail, commercial, industrial, education and tourism uses; with characteristics including a strong sense of place, a vibrant and vital town centre, opportunities for education and cultural experiences for all, a network of linked open spaces, recreational uses and other social infrastructure elements to

provide for a good quality of life and increased emphasis on sustainable forms of transport and patterns of development”

- 2.6.3. Table 2.16 – Core Strategy Table of the CDP includes footnote 9 which states - A Joint Local Area Plan for Graiguecullen shall be carried out in collaboration with Carlow County Council. A zoning map has therefore not been included within Volume 2 of this Plan, until such time as the Joint LAP has been completed and incorporated through a variation of the CDP. The total amount of land zoned within the built-up footprint of the settlement has not been indicated as it may be subject to change. The projected growth and housing allocation will, however, be incorporated into the Joint LAP.

3.0 Planning History

3.1. Site

None

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have the lands excluded because they are partly in use as a private residence and for agriculture.
- 4.2. Also, part of the “Meadows Way” development which is partially complete and due to recommence on 3rd January 2023.
- 4.3. The lands to the southern end are part of pre-planning discussion and the review of the joint Carlow Graiguecullen LAP.

5.0 Determination by the Local Authority

- 5.1. The local authority determined that the use of the lands as a private residence and for agriculture are not criteria for exemption. Neither is the fact that the lands enjoy the benefit of a valid permission for residential development nor that the LAP is under review.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are set out in two separate submissions.

1. Received 9th May 2023 from Malcomson Law setting out the following:

- The RZLT relies on the zoning provisions of the Joint Spatial Plan for the Greater Carlow Graiguecullen Area 2012-2018 extended 4th November 2022.
- It appears this extension was carried out in a manner that did not comply with either the SEA Directive 2001/32/EEC and Habitats Directive 92/43/EEC which require appropriate compliance.
- Accordingly, no reliance can be placed on the Plan by Laois County Council in the absence of said Plan determined within the period of the extension not having complied with the obligations under Council Directive 92/43/EEC.
- The Council made a determination and is *functus officio*.
- Accordingly, it is not necessary in this case to proceed with the issue of exemption given that the zoning of land and has not been established.

2. Received 23rd June 2023 from Malcomson Law setting out the following:

- The lands are not serviced in terms of suitable access to road infrastructure as only 69m of road frontage exists in which to locate a new entrance. Alternative access is not in the control of the appellant.
- Pedestrian safety, sightline availability and excessive number of access points on the road raised.
- There is inadequate emergency storage in the pumping station to cater for increased population on site. Surface water discharges to an existing stream to the east of the site, the stream is subject to flooding and consequently any scheme will need to be attenuated.

7.0 Assessment

7.1. The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place.

7.2. Regarding the zoning, the extant Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 expired on 4th November 2022. The new Laois County Development Plan 2021-2027 was adopted on 25th January 2022 and came into effect 8th March 2022. Table 2.16 *Core Strategy Table* of the CDP 2021-2027

includes footnote 9 which states – “A Joint Local Area Plan for Graiguecullen shall be carried out in collaboration with Carlow County Council. A zoning map has therefore not been included within Volume 2 of this Plan, until such time as the Joint LAP has been completed and incorporated through a variation of the CDP”.

7.3. An Issues Paper for the Carlow-Graiguecullen Joint Urban Local Area Plan 2023- 2029 was prepared in September 2022. Pre-draft consultation was undertaken from 16th September 2022- 12th October 2022. The formal process of preparing the Local Area Plan has to date not been completed and the Carlow Graiguecullen Local Area Plan 2023-2029 has not been adopted. Owing to the fact that the CDP does not include a zoning map for Graiguecullen, the fact that the extant Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 expired on 4th November 2022 and the new LAP has yet to be prepared, it is reasonable to conclude that the land is not zoned and therefore not in scope.

7.4. Regarding the appellants contention that the land cannot adequately accessed. Section 4.1.1 Pg. 24 of the guidelines state in appraising whether suitably zoned lands are connected, or able to be connected to services this assessment must consider the following infrastructure categories:

- *Road access*

In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority.

In this case the site has direct access on to the public road, the appellant is the owner of the c. 70m of road frontage through which access can be obtained, it is reasonable to consider that the lands are ‘able to connect’ and access arrangements are not contingent on third-party consent.

7.5. Regarding the concerns raised with respect to foul sewer capacity and surface water, I note the PA in their assessment raised no concerns in this regard. I note Uisce Eireann capacity register indicates that there is capacity in the wastewater network with some upgrade works planned for 2023. It is therefore reasonable to conclude that service connection is available and any shortcomings in the existing wastewater

treatment plant will be addressed by UE. Issues relating to surface water disposal including attenuation will be addressed as part of the planning process. On this basis, it is reasonable to consider that the lands to be *'connected'* or *'able to connect'* to the existing network.

8.0 Recommendation

- 8.1. I recommend that the Board overturn the determination of the local authority and direct the local authority to exclude 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 which clearly set out that land in scope will be zoned for residential. Having regard to the expiry of the extant Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 and the absence of a zoning map in the Laois County Development Plan 2021-2027, it is reasonable to consider that the land is not zoned and considered *'out of scope'* for the purposes of the RZLT map.

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.

Irené McCormack
Senior Planning Inspector

11th August 2023