



An  
Bord  
Pleanála

## Inspector's Report ABP-316995-23.

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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**

Leinster Street, Athy, Co. Kildare

**Local Authority**

Kildare County Council

**Local Authority Reg. Ref.**

KCC-C108-37

**Appellant**

Bluetrack Property

**Inspector**

Emma Nevin

## 1.0 Site Description

- 1.1. The site, with an area of 0.54ha, comprises a parcel of land to the rear of the properties on Leinster Street within the town centre of Athy. The site has access to the north, via 5 Leinster Street, which provides access to Leinster Street, to the front of the site, these lands are also in the appellants ownership (and are subject to a separate appeal Ref. ABP 316704-23). The surrounding land use includes a mixed used developments including residential.

## 2.0 Zoning

- 2.1. The site is zoned 'new residential' in the Athy Local Area Plan 2021 - 2027 under objective A, 'Town Centre' M2, with a stated objective "To protect, improve and provide for the future development of the town centre".
- 2.2. It is noted that residential development is 'permitted in principle' under this land use zoning objective.

## 3.0 Planning History

- 3.1. Ref. 19968: An extension of duration of permission was refused for planning reference 07/300058 by Kildare County Council on the 17/10/2019. The reason for refusal stated that the development had not commenced on site, substantial works had not been carried out and the development was subject to an Environmental Impact Assessment before the permission was granted. As such, the planning authority were precluded from granted a further extension of the appropriate period of planning reference 07/300058.
- 3.2. Ref. 14/300003: An extension of duration of permission was granted for planning reference 07/300058 by Kildare County Council on the 15/05/2014.
- 3.3. Ref: 07300058: Conditional planning permission granted by Kildare County Council and decision to grant permission upheld by An Bord Pleanála (ABP reference could not be located at time of writing report) for the construction of a mixed-use development including retail, commercial and residential uses (total no. of dwelling units is 87) and a multi-storey car park at 3, 4 & rear of 5-17, Leinster Street, Athy.

## **4.0 Submission to the Local Authority**

- 4.1. The appellant submits that the lands do not meet the qualifying criteria as set out in Section 653B of the Taxes Consolidation Act, 1997, as amended as the site does not have adequate road or footpath access, although it adjoins St. Michael Court, the infrastructure is not adequate to facilitate development of the site.
- 4.2. The Athy Local Area Plan, 2021-2027, sets out objectives for new streets which may provide access in the future but until these lands are built by the local authority, the site cannot be developed.
- 4.3. As such the appellant requests that the lands are removed from the Draft RZLT Map.

## **5.0 Determination by the Local Authority**

- 5.1. 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.
- 5.2. The subject lands are zoned ‘A’ in the Athy Local Area Plan 2021 – 2027, and “residential development” is permitted in principle within the Town Centre zoning matrix.
- 5.3. It is considered that the lands that are the subject of the submission are vacant or idle; as provided in the guidelines, ‘vacant or idle land’ means land which, having regard on to development (within the meaning of the Act of 2000), which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The appellant states that the lands are zoned ‘C’ ‘New Residential’ which has an objective ‘to provide for new residential development’, and, therefore, meets the criterion.

- However, Section 653B(b) indicates that further criteria which a site must satisfy in order to be included in the RZLT map. The appellant states that it is not reasonable to consider that the lands have access to roads and footpaths or foul sewer drainage necessary for dwellings to be developed.
- The site does not have adequate road or footpath access, although it adjoins St. Michaels Court the infrastructure is not adequate to facilitate development of the site, both the footpath and roads are too narrow.
- When planning permission was granted for St. Michaels Court, it was a condition of this permission that access to the subject lands would not be allowed access through St. Michaels Court.
- The Athy Local Area Plan 2021 – 2027, set outs objectives for new streets which may provide access in the future but until these are built by the local authority the site cannot be developed. The line and location of these streets and associated parking as identified in the Plan will need to be determined.
- The sewer running down Leinster Street, does not have the capacity to service these lands. Confirmation should be sought from Uisce Eireann.

## 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. It is noted that the appellant has incorrectly identified the site as ‘C’, ‘new residential’, in their appeal to An Bord Pleanála, however as per the Athy Local Area Plan 2021 – 2027, the subject site is zoned ‘objective A’, ‘Town Centre’, and while the primary land use is to provide for the future development of the town, residential use can also be considered under this zoning objective.
- 7.2. Section 3.1.2 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, describe permissible exclusions from the map, including where land located within mixed use zones, which permit a variety of uses including residential, should only be considered to be in scope for the tax where they are vacant or idle. The subject site is zoned for mixed use, including residential and is

undeveloped, therefore being vacant/idle. As such, the site falls within scope of the land use zonings applicable to the RZLT.

- 7.3. The appellant states that the site does not have adequate road or footpath access. It is noted, however, that the site has access to the north, via the site/property at 5 Leinster Street, leading to the public road, these lands are also in the appellants ownership (and are subject to a separate RZLT appeal Ref. ABP 316704-23). There is also potential to connect to the adjoining residential development at St. Michaels Terrace to provide access. I also reference Section 4.1.1 (iii) of the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, which states; “ *In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope*”. In this regard, it is considered that the site is suitably serviced and is considered to be ‘connected’ or ‘able to connect’ as per Section 653B(b) of the Taxes Consolidation Act, 1997, as amended.
- 7.4. The reference to a specific condition of a planning application pertaining to the adjoining site at St. Michaels Terrace, does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.5. The appellant refers to specific objectives in the Athy Local Area Plan 2021 – 2027, with respect to new streets, the Athy Local Area Plan provides an illustration as to how a revitalised Athy Town Centre would function and includes specific objectives to be considered as part of any development(s) within the town. However, I do not consider that the objectives in the Athy Local Area Plan 2021 – 2027, would preclude the provision of dwellings on this subject site, as per section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.6. The applicant states that there is insufficient capacity to serve the lands and confirmation should be sought from Uisce Eireann.
- 7.7. No report was received from Uisce Eireann on the subsequent appeal.

- 7.8. It is noted the Greater Dublin Area water resource zone (WRZ ID: GDA) is stated to have Capacity Available - LoS improvement required on the Uisce Eireann Water Supply Capacity Register published in June 2023 (Capacity Available - LoS improvement required means '*Capacity Available to meet 2032 population targets - Level of service (LoS) improvement required. Leakage reduction and/or capital investment will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process*').
- 7.9. In my opinion there is a viable water supply/ connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.10. It is noted the Athy WWTP (Ref. D0003) has a Green Status on the Uisce Eireann Wastewater Treatment Capacity Register published in June 2023. Green status is stated to mean '*spare capacity available.*'
- 7.11. In my opinion there is a viable wastewater connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of wastewater, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

## 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-C108-37 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 the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, the lands as identified KCC-C108-37 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.*

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Emma Nevin  
Planning Inspector

23<sup>rd</sup> August 2023