



An
Bord
Pleanála

Inspector's Report

ABP-317692-23

Type of Appeal	Appeal under section 653J(2) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax.
Location	Lands at Kilmeague, Naas, Co. Kildare.
Local Authority	Kildare County Council.
Planning Authority Reg. Ref.	KCC-C135-3.
Appellant(s)	Edward Connell.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as KCC-C135-3 refer to lands at Kilmeague, Naas, Co. Kildare.

2.0 Zoning and other provisions

The relevant plan is the Kildare County Development Plan 2023-2029.

Volume 2 Section 3 (Villages and Rural Settlement), Section 3.17 Kilmeague (village)

The lands are zoned 'New Residential' with an objective 'to provide for new residential development'.

V GO 9 Restrict growth in a village/settlement where necessary physical and social infrastructure cannot be delivered. In the absence of the necessary physical or social infrastructure, the projected growth for that development centre may be allocated to other serviced settlements within the same Municipal District or adjoining Municipal District or to serviced towns within the upper range of the settlement hierarchy.

V2.3.17 states:

Physical Infrastructure:

Water: Supplied by the Srowland WTP. Kilmeague has an adequate water supply to meet the current demands and future planned growth over the life of this Plan.

Wastewater: Kilmeague is serviced by Kilmeague WWTP. There is an identified spare capacity of 90(PE). KCC Wastewater Operat5oins are currently liaising with Irish Water to improve the treatment processes at the Kilmeague WWTP.

V KM7 It is an objective of the Council to require that a masterplan for the lands zoned C New Residential (See Map V2 – 3.11) be agreed with the Council. The masterplan shall show the overall site being developed in a manner, where the lands closest to the crossroads are developed first and the remaining lands developed in a sequential manner to the west.

V2 3.17.7 Physical Infrastructure. It is an objective of the Council to;

V KM10 Only consider development where appropriate wastewater treatment facilities can be provided as part of the overall development.

V KM11 Require and facilitate the upgrading of the existing Kilmeague Wastewater Treatment System and the provision of a new outfall to cater for the existing loading and any possible future development of the village.

3.0 Planning History

None noted.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the supplemental map, requesting that lands be excluded on the basis that the lands are on a long term lease, the existing sewerage system is overloaded, raw sewerage removed from farm drains in 2020, the existing infrastructure is inadequate to cater for extra housing and the local school is over capacity.

5.0 Determination by the Local Authority

The local authority determined:

Amend the RZLT map to remove the area representing the land that incorporates the trunk sewer and its associated wayleaves.

Having considered the submission received from the landowner, it has been determined that the portion of land area representing the location of the trunk sewer and associated wayleaves traversing the site, does not fulfil the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Ministerial Guidelines Residential Zoned Land Tax – Guidelines for Planning Authorities for inclusion on the RZLT map and will be excluded from the final map published on 01 December 2023 for the following reasons:

1. The land is included in Volume 2 (V2 3.12.1 Kilmeague) of the Kildare County Development Plan 2023-2029 and is zoned for residential development.

2. The lands is serviced, or it is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.
3. Given the location of trunk sewer network(s) that pass through or traverse the lands, the subject of this submission, it is recommended that the RZLT map may be amended to remove the land area representing the location to the trunk sewer(s) and associated wayleaves from the final RZLT map in accordance with Section 653B(c) (iii)(v) of the Taxes Consolidation Act 1997.

There is a reference to the minimum distance between building and sewers in an IW link attached to the Determination.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- Kilmeague village has a high ratio of public to private housing. The site would attract mono typology of housing and there is no commercial element to provide employment opportunities. Given the proximity of the site of the village centre this site should form part of a masterplan for the village in due course.
- It is not accepted that the lands are serviced or it is reasonable to consider that they may have access to services. There is no footpath or public lighting on that side of the road.
- The Kilmeague WWTP is at capacity and is not operating correctly. The lands have been contaminated by raw sewerage escaping the WWTP.
- V KM10 and V KM 11 will not be fulfilled during the lifetime of the plan as there are no present proposal to upgrade the WWTP to accommodate the current use let along additional discharge into same.

- The soil quality at the location is suitable for agriculture and other poorer quality of lands in the vicinity should be zoned for housing.

7.0 Assessment

The comments raised in the appeal are noted. The grounds of appeal have raised a number of issues that are not within the remit of section 653B of the Taxes Consolidation Act 1997 as amended. This includes inter alia that the soil quality at the location is suitable for agriculture and other poorer quality of lands in the vicinity should be zoned for housing. Section 653I refers to zoning submissions. Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. The legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I. This position is consistent with the Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that "in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only". Compliance with the provisions of section 653I or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential. The lands are zoned 'New Residential' and therefore are considered within scope of section 653B(a)(i).

I note the reference in the grounds of appeal to a masterplan and provisions contained in the current Kildare County Development Plan. The requirement for a masterplan to be prepared is not included in the criteria for exclusion as set out under section 353B, as such I consider that the land complies with the criteria set out in section 353B of the Taxes Consolidation Act 1997, as amended (as introduced by the Finance Act 2021) and this ground of appeal dismissed.

The appellant has also submitted that the lands are more suited to agricultural use. The 2022 RZLT Guidelines notes that the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. Based on the information available I have no evidence that this is the case. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and therefore the appeal on these grounds should be dismissed.

The grounds of appeal submit that the lands should be excluded as there is no footpath or public lighting on that side of the road.

It is also submitted that the Kilmeague WWTP is at capacity and is not operating correctly. The lands have been contaminated by raw sewerage escaping the WWTP.

The provision of infrastructure to the subject lands are considered to be in the control of Kildare Council or Uisce Eireann and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map.

Correspondence from UE confirms that a local distribution water main is accessible less than 3m away via the road adjoining the lands parcel to the north east of the site. A trunk main exists on the public road in close proximity to the south west of the site which needs to be protected. UE also confirms that a wastewater network exists on the public road in close proximity to the site and is accessible less than 10m away via the R415 adjoining the land parcel. There is also a sewer main that runs partially through the south west corner of the site, c. 5m from the boundary line. KCC excluded lands affected by the trunk sewer(s) from the final RZLT Map.

Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authority 2022 clear sets out that 'A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. For the purposes of falling within the scope of RZLT the criteria is whether it is 'reasonable to consider'. Issues relating to capacity were not raised and I have no evidence that this is an issue. The provision of infrastructure to the subject lands are considered to be in the control of Kildare County Council or Uisce Eireann and the local authority determined that the subject lands are in scope and therefore retained within the RZLT Final Map. Issues relating to capacity were raised and reference to objectives in the current County Development Plan. Neither the planning authority or Uisce raised concerns relating to capacity, and I have no evidence that this is an issue.

With regard to the provision of footpaths, I note that the local authority determined that the current appeal site fell within the scope of RZLT. I note that the site at present has no footpaths running along its road frontage with the R415. There are paths on the opposite side of the road. For the purposes of falling within the scope of RZLT the criteria is whether it is 'reasonable to consider'. The land at present is not connected to the existing footpath network in Kilmeague however it is in principle reasonable to consider that the provision of a footpath along the R415 may be provided where land is in the control of the landowner or local authority.

The lands can be served in principle by the existing road network that is in place and are zoned residential. UE have confirmed that services are available. I consider it is reasonable to consider that the provision of access, footpaths, public lighting, surface water drainage, sewer and water connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and the grounds of appeal should be dismissed.

Having regard to the foregoing I consider that the lands identified as KCC-C135-3 are zoned New Residential meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of this portion of the lands from the final map.

8.0 Conclusion & Recommendation

The lands identified as KCC-C135-3 are located on lands zoned residential are considered in scope of section 653B(a). The lands are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. The lands identified as KCC-C135-3 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as KCC-C135-3 on the final map.

9.0 Reasons and Considerations

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 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The lands identified as KCC-C135-3 are zoned residential, are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. The lands identified as KCC-C135-3 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the 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.

Dáire McDevitt

Senior Planning Inspector

17th October 2023