



An
Bord
Pleanála

Inspector's Report ABP-320344-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Lands at Kilcullen Road, Naas, Co. Kildare

Local Authority

Kildare County Council

Planning Authority Reg. Ref.

KCC-C231-15

Appellant

Mathew Purcell

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified Kilcullen Road, Naas, Co. Kildare are located to the immediate north of the South Ring road. There is no parcel ID attributed to the site. The lands are triangular in shape and narrow to a point at the eastern side. The lands are under grass and the site boundaries are defined by hedgerow vegetation. To the west, on the opposite side of Rathasker Road is the Whitethorn residential estate and to the east are agricultural lands.

The concurrent RZLT appeal under ABP 320309-24 by William Purcell for lands at Kilcullen Road, Naas West, are located to the immediate north of the subject site.

2.0 Zoning and Other Provisions

The relevant plan is the Naas Local Area Plan 2021-2027.

- Under the LAP the site is zoned B: Existing/Infill Residential (R2.6) - To protect and enhance the amenity of established residential communities and promote sustainable intensification.
- Under Table 11.1.1 of the LAP, Dwellings are permitted in principle on lands zoned B: Existing/Infill Residential
- The lands are not subject to any phasing provisions under the LAP.
- MTO 1.10 Seek to retain the character of Rathasker Road, Craddockstown Road and other rural links on the outskirts of the town and the extent of their approach to the town centre and to develop them as a connected series of walking routes in conjunction with Slí na Sláinte and other relevant bodies.

3.0 Planning History

PA. Ref. KCC-C108-46, ABP Ref. 316726: On the 01 November 2023 the Board made the decision to confirm the determination of the local authority and to retain the site on the RZLT map.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that the site is been in agricultural use for over a century, the lands do not have potential for residential development owing to its size and shape, that not all residential zoned lands should be developed as stated in recent court decisions, lack of connection to the road network, and no proof of connection to water infrastructure.

5.0 Determination by the Local Authority

The local authority determined that:

It has been determined that the subject site at Kilcullen Road, Naas fulfils the qualifying criteria set out in Part 22A of the Taxed Consolidation Act 1997 (as introduced by the Finance Act 2021 and amended by the Finance (no. 2) Act 2023) and the 2022 Section 28 Ministerial Guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map for the following reasons:

1. The subject lands are included in the Naas Local Area Plan 2021-2027 and is zoned for residential development.
2. The land 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.

Therefore, it is recommended that the subject lands identified as KCC-C231-15 at Kilcullen Road, Naas, Co. Kildare be retained on the Final RZLT map.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Not all zoned residential land is available for development, with reference to the core strategy and previous cases before the courts.

- Table 3.4 of the LAP notes a requirement for 1,147 new homes while Table 3.5 states that there is capacity for 1,962 new homes in the zoned lands of the LAP.
- The site is in use for agricultural purposes.
- The site is not available for development owing to its size, shape, peripheral location and traffic noise from the adjoining road.
- No evidence is provided that the site is able to connect to water services that have sufficient capacity.
- To be included on the RZLT map, a site must have access to road infrastructure.

7.0 Assessment

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, 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. 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”.

The subject site, shown on page 5 of the submission to the LA, was the subject of a previous RZLT determination under ABP-316726-23. Under ABP-316726-23, the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. I note that the grounds of appeal under this previous case are similar to those under the current appeal. I note that the context and character of the site has not significantly changed since this previous determination.

The appeal submission has raised grounds that are outside of the scope of the Boards assessment including the rezoning of lands, justification for the zoning of the site for

residential development, and the constitutionality of the Act. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. Compliance with Section 653I is not within the remit of this report. The role of the Board is confined to compliance with the qualifying criteria set out in Section 653B.

The subject site is zoned B: Existing/Infill Residential and, therefore, meets the criteria for inclusion on the RZLT map under Section 653B(a).

I note that the Grounds of Appeal refer to the site not being vacant or idle. Section 653B(ii) of the Act, which provides to the exclusion of sites that are not vacant or idle, refers only to lands zoned for a mixture of uses under Section 653B(a)(ii) Act. As the site is zoned for resident development, Section 653B(ii) is not applicable in this instance.

The Grounds of Appeal state that the site does not meet the criteria for inclusion on the RZLT map as it is used for agriculture.

As per Section 653B(i) of the Act, where a site is zoned primarily for residential use it is only excluded from the RZLT map where the trade or profession being undertaken is subject to commercial rates. I note that page 11 of the Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022 (RZLT Guidelines) states that “*Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates*”. As agriculture is not subject to commercial rates, I do not consider that the site meets the criteria for exclusion under Section 653B(i) of the Taxes Consolidation Act 1997, as amended (the Act). In this way, the grounds of appeal should be dismissed.

The appellant states that no assessment has been provided in respect of a potential connection to water infrastructure or capacity in those networks. It is further stated that the site does not have access to the public road.

The subject site immediately adjoins Rathasker Road at its western boundary, beyond which is the Whitethorn residential development. Based on the proximity of the site to the Whitethorn residential development it is reasonable to consider that the site can connect to existing water infrastructure in this development. The Rathasker Road is a public road, therefore, no third-party lands would be required to connect to the nearby development. I note that page 23 of the RZTL guidelines states: “*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".

The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 16 September 2024) indicates that there is spare capacity available at the Osberstown WWTP, which forms part of the Upper Liffey Valley Sewerage Scheme. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 16 September 2024) indicates that there is capacity available at the Greater Dublin Area Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Drawing from the above, I consider that there is sufficient capacity in the water network to serve the site.

The subject site is currently accessed from Rathasker Road at its western boundary. I note that Rathasker Road has a limited width and appears to function primarily as a pedestrian/cycle route. I consider that Objective MTO 1.10 of the LAP may limit potential to widen the Rathasker Road to accommodate 2-way vehicular traffic. The roads serving the Whitethorn residential development to the west terminate at Rathasker Road and provide a vehicular and pedestrian route to John Devoy Road. On the basis of the proximity of the site to the road infrastructure at the Whitethorn development, it is reasonable to consider that the subject site is able to connect to road infrastructure at this location. Therefore, I consider that the site meets the criteria for inclusion on the RZLT map under Section 653B(b) of the Act.

The Grounds of Appeal state that a site is not available for development based on land use zoning alone. Reference is made to the core strategy provision of the LAP, which provides more zoned land than is required to meet the core strategy allocations. Under the LAP, the site is not designated as Tier 2 or Phase 2 development. In this way, there are no phasing provisions that would preclude the provision of dwellings at the site. On this basis, it is reasonable to consider that the site can provide dwellings.

The Grounds of Appeal state that the site is not available for development with reference to its peripheral location, size and shape, and the impacts of traffic noise

from the adjoining Ring Road. The site is located within the LAP boundary and is zoned for residential development therein. The site is also located within the CSO Settlement Boundary 2016 for Naas, proximate to existing residential development. In this way, it is reasonable to consider that the location of the site does not preclude the provision of dwellings. While I note that the triangular shape of the site may impact the size and layout of residential development, I do not consider that these characteristics preclude the provision of dwellings at the site with reference to the pattern of existing development in the locality. In respect of noise impacts, I note that the sites of recently constructed residential developments at the Whitethorn and Elsmore to the west of the site immediately adjoin the South Ring Road, similar to the subject site. On the basis that the noise from the adjoining road has not prevented residential development proximate to the site, it is reasonable to consider that the traffic noise does not preclude the provision of dwellings at the subject site. In light of the foregoing, it is reasonable to consider that the site meets the criteria under Section 653B(c). With reference to the wording of the Act and to Section 3.1.2 of the RZLT Guidelines, I note that noise is not a basis for exclusion under Section 653B(c).

There are no physical conditions or constraints at the site that would preclude the provision of dwellings, therefore, the site meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Kilcullen Road, Naas 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 the subject lands from the final map. I recommend that the determination of the local authority is confirmed, and the lands retained on the RZLT map.

9.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered

to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Kilcullen Road, Naas are located on lands zoned B: Existing/Infill Residential and are considered in scope of section 653B(a). As the site is not zoned for mixed use development, it is not subject to exclusion from the RZLT map under Section 653B(ii). The existing agricultural use of the site is not commercial rates paying and, therefore, the site does not meet the criteria for exclusion under Section 653B(i) of the Act. The lands are located on the opposite side of Rathasker Road to the Whitethorn residential development, therefore, it is reasonable to consider that the site is able to connect to water and roads infrastructure at this location. UE capacity registers accessed 16 September 2024 indicate that there is capacity available in the water networks to serve the site. Based on the foregoing, the site meets the criteria under Section 653B(b) of the Act. With reference to its location within the settlement boundary for Naas, its proximity to existing residential development and the pattern of residential development in the area, it is reasonable to consider that the site is not precluded from providing residential development as per Section 653B(c). No physical constraints or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kildare County Council

Local Authority Reference Number: KCC-C231-15

Appeal by Mathew Purcell care of Farry Town Planning Ltd. in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Kildare County Council on 25 day of June 2024 in respect of the site described below.

Lands at: Kilcullen Road, Naas, Co. Kildare

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Kilcullen Road, Naas, Co. Kildare, on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Kilcullen Road, Naas are located on lands zoned B: Existing/Infill Residential and are considered in scope of section 653B(a). As the site is not zoned for mixed use development, it is not subject to exclusion from the RZLT map under Section 653B(ii). The existing agricultural use of the site is not commercial rates paying and, therefore, the site does not meet the criteria for exclusion under Section 653B(i) of the Act. The lands are located on the opposite side of Rathasker Road to the Whitethorn residential development, therefore, it is reasonable to consider that the site is able to connect to water and roads infrastructure at this location. UE capacity registers accessed 16 September 2024 indicate that there is capacity available in the water networks to serve the site. Based on the foregoing, the site meets the criteria under Section 653B(b) of the Act. With reference to its location within the settlement boundary for Naas, its proximity to existing residential development and the pattern of residential development in the area, it is reasonable to consider that the site is not precluded from providing residential development as per Section 653B(c). No physical constraints or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

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.

Sinéad O'Connor

Planning Inspector

Date: 16 September 2024