



An
Bord
Pleanála

Inspector's Report ABP-320346-24

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 Leggettsrath West, Kilkenny

Local Authority

Kilkenny County Council

Planning Authority Reg. Ref.

KK-C247-4

Appellant

Alexander J Wilsdon

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands comprise 2 no. adjoining parcels that are located to the north of the Dublin Road and to the south of the railway line, in the west of Kilkenny City Centre. There are no Parcel IDs prescribed to these lands. Site A is the larger of the 2 no. sites and forms the eastern side of a field that is in agricultural use. Site A immediately adjoins the railway line to the north and the residential development at Shandon Park to the east. Site B immediately adjoins Dublin Road to the south and is located to the rear of a Lacken Lodge house. Site B is under grass and largely overgrown.

2.0 Zoning and Other Provisions

The relevant plan is the Kilkenny City and County Development Plan 2021-2027, which came into effect on 15 October 2021.

- Site A is zoned 'Existing Residential' - To protect, provide and improve residential amenities. under Figure CS4 Kilkenny City Zoning of the Plan. Dwellings are listed as Permitted Uses under Section 2.9.3 of the Plan.
- Site B is zoned 'General Business' - To provide for general development. Dwellings are listed as Permitted Uses under Section 2.9.5 of the Plan.
- Site B occurs within the 'Lacken' Architectural Conservation Area, as per Figure HS5 of the Plan.
- Section 4.5.8 states that the character of the Lacken ACA is defined by views to the River Nore and across to Kilkenny Castle from Dublin Road. It is stated that houses with mature trees on the Dublin Road contribute to the character of the area.
- The lands are not specifically referred to in Section 2.2 Kilkenny City Core Strategy. The sites are at the edge of the Loughboy/Archerstreet neighbourhood, which is stated to be largely built-out, as per Section 2.2.2 of the Plan.
- Appendix N: Infrastructure Assessment of the Plan designates Site A for Phase 1 Residential Development. Site A (Site 7 of Appendix N) as designated as Tier 1 lands.

3.0 Planning History

ABP Reg. 316394: This file relates to Site A. On the 17 July 2023 ABP made the decision that the lands zoned Existing Residential meet the criteria for inclusion in 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:

- The grounds of RZLT are flawed.
- Lack of certainty in respect of water services capacity.
- The lands zoned General Business are in agricultural use and are not vacant or idle.
- Site B constitutes the garden of Lacken Lodge and is not vacant or idle.
- The site is sufficiently large to warrant a masterplan. Accommodation should be afforded to allow the preparation of same, or confirmation that a masterplan will not be sought.
- The residential land use zoning was never sought at the site.
- The legal and financial status of the sites precludes development.

5.0 Determination by the Local Authority

The local authority determined that:

By Order dated 25/6/2024 it was determined to include the above land on the final map of the Residential Zoned Land Tax for the following reasons:

Site A

- This land is zoned as Existing Residential in the Kilkenny City and County Development Plan, 2021, and
- The site constitutes land satisfying the relevant criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended, for inclusion in the map.

Site B

- This land is zoned as General Business in the Kilkenny City and County Development Plan, 2021, and
- The site constitutes land satisfying the relevant criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended, for inclusion in the map.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- There are legal issues preventing the provision of residential development at the sites.
- As the lands cannot be developed for housing, they should be rezoned. Precedents are given for the rezoning of lands to avoid the payment of RZLT.
- A residential land use zoning was not sought at the site. There is unzoned land under control of the LA that could replace the zoned lands at the subject site.
- Serviced and zoned lands elsewhere in Kilkenny have been designated as Tier 2 inappropriately.
- Site B comprises the garden ancillary to Lacken Lodge and, therefore, this site is not Vacant or Idle.
- Site B occurs in a conservation area and, therefore, would not get planning permission for development.
- The LA assessment is disputed on the basis of an undeclared conflict of interest.

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 Grounds of Appeal include matters that are outside of the scope of the Board’s assessment of the LA determination under Section 653B of the Taxes Consolidation Act 1997, as amended. Such matters have not been assessed.

The appellant states that the sites are Tier 2 lands which are not available for development and should be excluded from the RZLT map for this reason.

Site A is zoned ‘Existing Residential’ and Site B is zoned ‘General Business’. Residential is permitted in principle under both zoning objectives. In this way, both sites meet the criteria under Section 653B(a). Site A is specifically designated as a Tier 1 site under the Plan. Site B is not attributed a tier on the basis that it is zoned General Business. This lack of designation under the Plan would not preclude the provision of dwellings at the site on the basis that residential development is permissible on zoned General Business lands.

At its eastern boundary, Site A immediately adjoins the road at Shandon Park, which has footpaths and lighting. Given the proximity of Site A to Shandon Park, it is reasonable to consider that Site A can access roads, footpaths and lighting. Site B immediately adjoins Dublin Road, which has footpaths and public lighting. On the basis of its proximity to the road, it is reasonable to consider that this site can access the road, footpaths and lighting.

The Uisce Eireann submission to the LA dated 20 June 2024 states that Site A can connect to potable water infrastructure at Shandon Park. It is stated that the public sewer is located at Dublin Road, circa 30 metres from the southwest corner of the site, and that a connection could be made via third party lands. From the maps submitted with the appeal statement, it is evident that Site A cannot be reached from Site B. In this way, consents over Third Party lands may be required to connect Site A to the

public sewer at Dublin Road. Page 24 of the RZLT guidelines states that land should be considered out of scope where works to connect to services would require Third Party lands or CPO. On the basis that Third Party consent may be required to connect Site A to the public sewer at Dublin Road, I consider that this site fails to meet the criteria under Section 653B(b) of the Act.

I note that this conclusion differs from that made under ABP-316394-23 in respect of Site A however, the contents of the UE submission to the LA on the present case indicate that the site does not meet the criteria under Section 653B(b).

As per the UE submission, Site B can access existing services at Dublin Road. The UE waste water capacity register published June 2023 (accessed 10 September 2024) indicates that there is capacity available in the Kilkenny City and Environs WWTP. The UE 10-year Water Supply Capacity Register Published June 2023 (accessed 10 September 2024) indicates that there is capacity available in the Kilkenny City Water Resource Zone with level of service improvement required. These works would not preclude development or inclusion of the site on the RZLT map with reference to page 8 of the RZLT Guidelines. In this way, it is reasonable to consider that Site B can connect to public services and infrastructure as per Section 653B(b) of the Act.

The appellant states that Site B would not be available for development on the basis that it forms part of an ACA.

Site B is located at the northern boundary of the Lacken Architectural Conservation Area. While it is stated that existing housing and trees on the Dublin Road contribute to the character of the area, I note that there are no policies or objectives in the Plan that would specifically preclude development at the site. Based on the foregoing, it is reasonable to consider that the ACA would not preclude the provision of dwellings at Site B. In this way, Site B meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

The Appeal states that Site B comprises the garden serving Lacken Lodge. It is stated that the site should be omitted from the RZLT map on the basis that it is not vacant or idle.

The definition for Vacant or Idle is provided in Section 653A of the Taxes Consolidation Act 1997, as amended. Under this definition, vacant or idle land comprises development that is not unauthorised development and is not required for or integral

to the operation of a trade or profession being carried out adjacent to the land. As per the Appeal Statement, Lacken Lodge is in residential use. On the basis that Lacken Lodge does not accommodate a trade or profession, it is reasonable to consider that Site B is not required for or integral to any trade or profession. Based on the foregoing, the site does not meet the criterion for exclusion from the RZLT map under Section 653B(ii) of the Act.

8.0 Recommendation

Having regard to the foregoing, I recommend that the Board confirm the determination of the local authority in part and set aside the determination of the local authority in part and allow the appeal in part in relation to the lands identified as lands at Leggettsrath West, Kilkenny.

Site A, which comprises the landbank outlined in red and not marked B in the map accompanying the LA Determination, does not meet the criteria for inclusion on the RZLT Map under Section 653B of the Taxes Consolidation Act 1997, as amended, on the basis that it is not reasonable to consider that the site can connect to public wastewater infrastructure.

Site B, which comprises the area marked B in the map accompanying the LA Determination, meets the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended

9.0 REASONS AND CONSIDERATIONS

The lands identified as lands at Leggettsrath West, Kilkenny are located on lands zoned Existing Residential and General Business, and are considered in scope of section 653B(a).

Site A, comprising the area outlined in red and not marked B in the map with the LA Determination, is zoned Existing Residential and is considered in scope of section 653B(a). As per the UE submission dated 20 June 2024 to the local authority, Site A may require Third Party consent to connect to the public sewer on Dublin Road, circa 30 metres to the south. Based on the foregoing, Site A does not meet the criteria for inclusion under Section 653B(b).

Site B, comprising the area marked B in the map accompanying the LA Determination, is zoned General Business and is considered in scope of section 653B(a). Site B immediately adjoins existing roads, footpaths and public lighting, the UE submission and capacity registers indicate that services are available and that there is sufficient capacity to serve the Site. No 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: Kilkenny County Council

Local Authority Reference Number: KK-C247-4

Appeal by Alexander J Wilsdon 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 Kilkenny County Council on the 26 day of June 2024 in respect of the site described below.

Lands at: Leggettsrath West, Kilkenny

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 in part and set aside the determination of the local authority in part and allow the appeal in part in relation to the lands identified as lands at Leggettsrath West, Kilkenny.

The Board set aside the determination of the local authority and allow the appeal in relation to the lands identified as Site A, which comprises the landbank outlined in red and not marked B in the map accompanying the LA Determination.

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Site B, which comprises the area marked B in the map accompanying the LA Determination, on the final map

Reasons and Considerations

The lands identified as lands at Leggettsrath West, Kilkenny are located on lands zoned Existing Residential and General Business, and are considered in scope of section 653B(a).

Site A, comprising the area outlined in red and not marked B in the map with the LA Determination, is zoned Existing Residential and is considered in scope of section 653B(a). As per the UE submission dated 20 June 2024 to the local authority, Site A may require Third Party consent to connect to the public sewer on Dublin Road, circa 30 metres to the south. Based on the foregoing, Site A does not meet the criteria for inclusion under Section 653B(b).

Site B, comprising the area marked B in the map accompanying the LA Determination, is zoned General Business and is considered in scope of section 653B(a). Site B immediately adjoins existing roads, footpaths and public lighting, the UE submission and capacity registers indicate that services are available and that there is sufficient capacity to serve the Site. No 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: 10 September 2024