



An  
Bord  
Pleanála

## Inspector's Report ABP-320350-24

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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

### Location

Whitestown Road, Rush, Co. Dublin

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

FIN-C657-RZT 24-06

### Appellant(s)

David Flynn

### Inspector

Fergal Ó Bric

## **1.0 Site Location and Description**

The site is located on the northern side of the Whitestown Road and approximately 1 kilometre west of Main Street, Rush. It bounds the rear of residential properties to the north, that front Old Road, while on the opposite side of Whitestown Road to the south, there are agricultural lands and structures. The site comprises a stated area of 0.28 hectares and the parcel id number is FL0000002145-part of.

## **2.0 Zoning and other provisions**

- 2.1. The site is zoned RS – Residential and within the defined Development Boundary for Rush under the Fingal County Development Plan 2023-2029.

## **3.0 Planning History**

PA reference number RZLT102/22, in 2023, Fingal County Council determined that the lands should be included within the RZLT map. ABP reference 316698-23, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands on the RZLT map.

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

- 4.1. The appellant made a submission to the Local Authority seeking to have his land removed from the RZLT map. The submission states that the lands form part of an active family farm.
- 4.2. The subject lands are greenfield and part of a wider horticultural business, the lands relate to sustainable agricultural practices which are a key aspect of the local economy. The subject lands are actively used for sustainable agricultural practices which are a key aspect of the local economy. The RZLT zoning on these lands poses a threat to the local economy of Rush. Reference is made to the document: Our Rural Future Rural Development Policy 2021-2025.
- 4.3. The site does not have access to the wastewater network and significant upgrade works would be required and would have to be completed at the expense of the developer.

- 4.4. The submission stated that the land is not fully serviced. There is no mains sewage in proximity to the subject lands and there are no water mains adjacent to the site either. The site is not idle and is actively used as part of a commercial family crop growing business.

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

The local authority determined to include the site on the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

The reasons set out by the Local Authority are as follows:

- 1-The land is included in a Development Plan or a local area plan and is zoned for residential development or zoned for a mixture of uses, that includes 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.
- 3-The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence or archaeological or historic remains.
- 4-The existing non-residential use of the lands that are the subject of the submission are not considered to benefit from the exclusions set out in the Finance Act 2021 at Section 653B(c).

## **6.0 The Appeal**

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

- The lands are integral to the operation and success of Forane Nurseries which supply's locally grown produce to the Rush and North Dublin area and to a number of the large supermarket chains.

- The imposition of the RZLT would make it impossible for him to make a living from his horticultural business.
- The site is not vacant or idle and is in active agricultural use and this was stated by the finance minister to provide a reasonable basis for removal of a site from the final RZLT maps.

## 7.0 Assessment

- 7.1. The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned RS-Residential in the current Fingal Development Plan 2023-2029. This zoning Objective is – *Provide for new residential communities subject to the provision of the necessary social and physical infrastructure*. The Local Authority determined that the lands are in scope and that they remain on the RZLT map. The local authority set out that the site is within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 7.2. The appellant sets out that the lands are part of an active farm and are integral to the operation and success of Forane Nurseries which supply's locally grown produce to the Rush and North Dublin area and to a number of the large supermarket chains.
- 7.3. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned for residential use, and not for mixed use, and, therefore, the exemption under part (c)(ii) does not apply. While the lands to the south (of which this site form part of the same overall family landholding) are zoned mixed use, the portion of the site subject to this appeal is zoned primarily for residential use. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not liable to commercial rates.
- 7.4. With respect to wastewater and water connections, the local authority reference correspondence from Uisce Éireann and their own Water Services Section which confirms that connection points to the wastewater and watermains networks are

located circa. 230 metres and 73 metres from the subject lands. Connection can be achieved along the public road via lands in local authority control. The extent of works required to achieve connection would be part of any normal development proposition for a site, and, therefore, can reasonably be achieved. With respect to capacity, Uisce Eireann's online capacity registers set out that as of June 2023 capacity is available in Rush.

- 7.5. With respect to pedestrian infrastructure, the Whitestown Road in front of the subject lands has footpaths along its northern side.
- 7.6. In relation to the subject lands, works that would be required to connect to existing wastewater and pedestrian infrastructure are within the normal parameters of what a development proposition might include, is not considered significant and can be reasonably considered to be undertaken over the landowners lands or publicly owned land.
- 7.7. Therefore, in my opinion, the subject lands should be considered to be in-scope.
- 7.8. The fact that the lands are in active and established agricultural use does not qualify for omitting the lands from the map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.

## **8.0 Recommendation**

- 8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include 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, the site is considered in scope for the purposes of the RZLT map.

The lands identified as FIN -C567-RZT24-06, parcel ID number FIN0000002145 (part of) are located on RS-Residential zoned lands identified within the current

Fingal County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. I acknowledge that the lands form part of an active farm and are not vacant or idle, however the horticultural activities are not liable to commercial rates. 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 in accordance with the RS zoning objective that applies to these lands. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## **10.0 Recommended Draft Board Order**

**Taxes Consolidation Act 1997 as amended.**

**Planning Authority:** Fingal County Council

**Local Authority Reference Number:** FIN -C567-RZT24-06

**Appeal** David Flynn in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the final Residential Zoned Land Tax Map by Fingal County Council on the 27<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Whitestown Road, Rush, County Dublin.

### **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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number FIN0000002145 (part of) and Local Authority reference number FIN -C567-RZT24/06 should remain on the RZLT map.

## **Reasons and Considerations**

The lands identified as FIN -C567-RZT24/06- (Parcel ID number FIN0000002145 part of). located on RS-Residential zoned lands identified within the current Fingal County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997. as amended. I acknowledge that the lands form part of an active farm and are not vacant or idle, however the horticultural activities are not liable to commercial rates. 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 in accordance with the RS zoning objective that applies to these lands. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended

I confirm that the report represents my professional 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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Fergal Ó Bric  
Planning Inspectorate

26th day of September 2024