



An
Bord
Pleanála

Inspector's Report ABP-320364-24.

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

Location

Kinsealy Lane, Malahide, Co. Dublin.

Local Authority

Fingal County Council.

Local Authority Reg. Ref.

FIN-C657-RZT 24/29

Appellant

Anne & Maria Murphy

Inspector

Fergal Ó Bric

1.0 Site Description

1.1 The site area comprises a stated 0.081 hectares of land on Kinsealy Lane, Malahide, Co. Dublin. The site comprises an agricultural yard area. The Planning Authority reference number is FUIN-C657-RZT 24-29 and the parcel ID number is FL0000002700.

1.2 There is a concurrent RZLT appeal reference number 320374-24 in the name of Anne and Maria Murphy in relation to lands north of this parcel of land.

2.0 Zoning

2.1. The site is zoned RS – Residential in the Fingal Development Plan 2023-2029. This zoning Objective – *Provide for residential development and protect and improve residential amenity.*

2.2. Zoning Objective Vision- *Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.*

3.0 Planning History

3.1. Site

PA reference number FIN-C529-RZLT 108 & RZLT144/22, in 2023, Fingal County Council determined that the lands should be included within the RZLT map. ABP reference 316648-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands on the RZLT map.

FCC Reg. Ref F20A/0526 – Permission granted on 22nd January 2020 for A single storey vegetable chill shed with a floor area of 65 square metres area and a maximum ridge height of 4.75 metres on a site of 980 square metres within the existing farmyard @ Murphy Farm, Kinsealy Lane, Malahide, Co. Dublin.

FCC Reg. Ref F09A/0336 – Permission granted on 27th day of April 2010 for the construction of an agricultural shed for the storage of agricultural machinery and equipment.

FCC Reg. Ref. F02A/193 - Permission granted in April 2002 to demolish existing outhouses, extend existing main agricultural barn to side, with lean to barn extension to rear of existing and proposed re-roof existing and extend roof onto existing and proposed main barn in a lean to style to provide additional infill barn, also to erect a detached single garage @ Murphy Farm, Kinsealy Lane, Malahide, Co. Dublin.

4.0 Submission to the Local Authority

The lands in question are in commercial use associated with the operation of a family farm which includes storing and packing of vegetables on site for retail purchasing. The site immediately adjoins a residential dwelling to the west, an agricultural structure to the north and the Hazelbrook residential development to the east.

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 of 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 at Section 653B(c).

6.0 The Appeal

Grounds of Appeal:

- The lands comprise a yard area associated with a larger land holding which supports the operation of a family farm which includes the storing and packing of vegetables on site for retail purchasing.
- The appeal acknowledges that the lands in question are zoned in the Fingal Development Plan for residential purposes and that the lands are serviced, or it is reasonable to consider may have access to services.
- The appeal submission refutes the suggestion that the site would not be physically affected. The yard, which is on the subject lands has been surfaced to specifically support heavy vehicles associated with the farm business to access the agricultural buildings.
- The land parcel comprises an active agricultural use supported by the yard areas and agricultural structures.
- These lands are used as a parking area for tractors and machinery, both of which are essential to the running of the business and the family farm.
- The yard area and access to the lands are crucial for the operation of the commercial business.
- The operations on site support a number of employees and provides for food production in the local area.
- The subject lands provide an employment service and economic contribution to the local area.

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 residential development and protect and improve residential amenity*. 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 appellants set out that the lands are part of a commercial business for the storing and packing of vegetables on site for retail purchasing. I note from the planning history, that a chill room is permitted under the most recent permission on the wider Murphy land holding immediately north of the subject lands, where vegetables would be stored.
- 7.3. Section 653B c) (i) provides for uses on lands which are not an unauthorised development, in which a business in which a trade is carried out, that is liable to commercial rates and is reasonable to consider is being used to provides services to residents of adjacent residential areas. The appellants have not clearly demonstrated based on the information submitted that the yard area which they state is intrinsically linked to the wider farm holding, including a commercial facility for the storage and packaging of vegetables on site is liable to commercial rates and, therefore, the lands are in scope.
- 7.4. Section 3.1.1 of the RZLT Guidelines include criteria for inclusion within scope of the tax measure and these include the use of the land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.
- 7.5. I acknowledge that the lands are in use for horticultural purposes and form part of the larger Murphy horticultural holding and agri-enterprise. However, the fact that the lands are in active and established horticultural use does not qualify for omitting the lands from the RZLT map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.
- 7.6. The appeal grounds do not raise any other matters that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997, as amended and the RZLT Guidelines

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**

The lands identified as FIN -C567-RZT24/29, parcel ID number FIN0000002700. 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. The lands form part of an established horticultural enterprise however, they are zoned for residential purposes. The subject lands are located within an established urban area with services available, and no capacity or other reasons, including established horticultural activities 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.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Fingal County Council

Local Authority Reference Number: FIN -C567-RZT24-29

Appeal Anne and Maria Murphy 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 27th day of June 2024 in respect of the site described below.

Lands at: Kinseally Lane, Malahide, 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 FIN0000002700 and Local Authority reference number FIN -C567-RZT24/29 should remain on the RZLT map.

Reasons and Considerations

The lands identified as FIN -C567-RZT24/29, parcel ID number FIN0000002700. 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. The lands form part of an established horticultural enterprise however, they are zoned for residential purposes. The subject lands are located within an established urban area with services available, and no capacity or other reasons, including established horticultural activities 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.

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.

Fergal Ó Bric
Planning Inspectorate

26th day of September 2024