



An
Bord
Pleanála

Inspector's Report ABP-320377-24

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 Rathbride Road, Kildare Town, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

KCC-C231-4

Appellant(s)

Tom Simpson

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The appeal lands, which are in agricultural use are located east of the Rathbride Road in Kildare town and lie immediately north of the Cork to Dublin railway line. The lands have approximately 85 m of road frontage onto the Rathbride Road and are accessed via an agricultural entrance from that carriageway. This access is located on the eastern side of Rathbride Road at the point where a stacking lane is formed for the signalised junction regulating access to the single-lane bridge over the railway line, which is located south-west of the lands.
- 1.2. While noting that the appeal submission refers to Land Parcel ID KELA00000080, the subject lands are identified as Parcel ID KELA00002819 on the RZLT Final Map, which adjoins Parcel ID KELA00000080.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are zoned Objective B: Existing Residential / Infill in the Kildare Town Local Area Plan 2023-2029, with the zoning objective 'To protect and enhance the amenity of the established residential communities and promote sustainable intensification.'
- 2.2. Adjoining lands to the east, which incidentally are not included in the RZLT Final Map but appear to be in the appellant's ownership, are zoned Objective CP2: New Residential Phase 2, with the zoning objective 'To protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development for future plans.'

3.0 Planning History

Subject site

An Bord Pleanála Ref. VV.09.309290 / Planning Authority Ref. KILD-01 refers to a February 2022 decision to enter the site on to the Vacant Site Register. This decision was quashed in April 2023 by Order of the High Court.

Adjoining lands to the north

An Bord Pleanála Ref. PL.09.313008 / Planning Authority Ref. 211033 refers to a June 2023 decision to grant permission for 87 houses and a creche and associated site development works.

4.0 Submission to the Local Authority

4.1 The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map, having regard to the following:

- The part of the land subject to Objective CP2 is not in fact zoned for the purpose of the Planning and Development Act 2000 as amended and should not be included in the RZLT map. Reference is made to a High Court case (2020 No.238 JR) which held that land designated 'Residential Phase 2' in the Meath County Development Plan was not zoned land for the purpose of Section 37(2)(b) of the Act.
- Reference made to Appendix 4 of the RZLT Guidelines which states lands designated Objective CP2 are the subject of a designation that precludes development at the time of the preparation of the draft RZLT map.
- The entirety of the lands does not have access to or are connected to public infrastructure.
- Landowner does not have legal entitlement to procure access to roads and footpaths necessary for dwellings to be developed and are subject to significant access and servicing constraints by reason of their location, configuration and relationship with adjoining lands and the railway line.
- Owner has no power to procure access to services.

- Condition 35 of Reg. Ref. 21/1033 requires network upgrades to facilitate the permitted development, and also requires those upgrades should accommodate Phase 2 of that applicant's zoned land bank and permitted third party units on an adjoining site to the west (Reg. Ref. 17/1272 refers).
- The Objective B zoned lands have not had the benefit of provision of required access to services to facilitate development. The entirety of the lands zoned Objective B and Objective CP2 are out of scope and should be omitted.

5.0 Determination by the Local Authority

5.1 The Local Authority determination states the following:

- Retain the majority of the site that is zoned 'B': Existing Residential/Infill' on the RZLT map, as it is within an area zoned for residential use that is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development. Therefore, the site does satisfy the criteria for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997 (as amended).
- Amend the RZLT map to remove a portion of land that represents the 25 metre 'buffer zone' along the railway line on the lands zoned 'B: Existing Residential/Infill' on the basis that it is required for transport facilities and infrastructure in accordance with Section 653B(c)(iii)(II) of the legislation.
- Remove the lands zoned 'C: New Residential Phase 2' from the Final RZLT map on the basis that it does not fulfil the qualifying criteria of Section 653B of the Taxes Consolidation Act 1997 (as amended).

6.0 The Appeal

6.1 Grounds of Appeal

The appeal relates only to the determination in respect of the area zoned Objective B (Existing Residential / Infill) which is retained on the RZLT map. The following points are made in support of the appeal:

- The extent of the lands to be retained on the RZLT map are the subject of significant access and servicing constraints, by reason of their location and configuration, and their relationship with adjoining lands (in third party ownership) and the railway line.
- Limited road frontage associated with the lands is significantly constrained, being located on the approach to the single lane railway bridge.
- The existing access is located on part of the Rathbride Road which forms a stacking lane for the signalised junction regulating access to the bridge and is therefore unsuitable for access to a multi-unit residential development as envisaged by the zoning objective pertaining to the lands. As such the lands are effectively landlocked.
- Safe and adequate access is not available and cannot be provided within the extent of the appeal lands.
- The report of the appellants' consulting engineer (Appendix C of the appeal submission refers) notes the following: 'Kildare County Council's Road Planning Section preference is for an entrance into the subject site through adjoining lands and is therefore not willing to give an access to Site 'A' from the Rathbride Road. This in effect leaves the development land 'landlocked' and dependent on Thoval Properties Ltd. grant of planning permission for access.'
- Permission implemented on lands immediately north-east of subject lands (Curragh Drive) does not facilitate vehicular access to the appeal lands.
- Permission was granted under ABP-313008-22 for residential development on the lands to the north. Given the constrained nature of the access to the appeal lands, the appellant requested that conditions be attached to any grant of permission requiring road and service infrastructure to be continued to the boundary of the subject lands and this was accepted.
- It is considered that access to the appeal lands via the adjoining lands to the north is the only viable access which would facilitate residential development on the subject lands.

- The access to the lands is dependent on the implementation of a permission on lands outside the appellant's control, and if implemented, it will be the subject of an agreement with the third party owner or alternatively will have to await taking in charge of the completed roads.
- The permission granted under ABP-313008-22 has not been implemented to date and as such the lands did not have adequate road access on 1st January 2022.
- It is submitted that the subject lands are dependent on the provision of necessary water and wastewater upgrades as permitted under ABP-313008-22.
- Having regard to the above, the subject lands are considered to be out of scope and do not meet the criteria of section 653B(1)(b).
- There is no explicit reference in the Local Authority's determination to the removal of open space zoned lands (Objective F) within the landbank that had been included on the draft map. It is requested the determination is revised to remove these lands as they do not fulfil the qualifying criteria of 653B.

The appeal includes the following appendices:

Appendix A - Determination by Local Authority.

Appendix B – Submission made to Local Authority on the Draft RZLT Map.

Appendix C – Consulting Engineer's Report.

7.0 Assessment

- 7.1 Noting that this appeal relates only to that part of the Local Authority's determination relating to the lands zoned Objective B, which are retained on the RZLT map, this assessment is confined to those lands zoned Objective B (Existing Residential / Infill) on the RZLT map which are identified as Parcel ID KELA00002819 on the RZLT map.
- 7.2 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".*
- 7.3 Section 653B of the Taxes Consolidation Act, 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 subject lands are zoned 'Objective B: Existing Residential / Infill' in the Kildare Town Local Area Plan 2023-2029 and are therefore within scope of section 653B(a)(i).
- 7.4 In terms of section 653B(c) it is reasonable to consider that 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 known archaeological or historic remains.

- 7.5 In terms of section 653B(b), the site is within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities for dwellings to be developed and with sufficient service capacity for such development.

In relation to water infrastructure, I do not concur with the appellant's contention that the subject lands are dependent on the provision of necessary water and wastewater upgrades as permitted by a planning permission on adjoining lands to the north (Ref. No. ABP- 313008-22 refers). A report from Uisce Éireann (UÉ) on file notes that the lands are serviced for water via a connection off the Rathbride Road, while a sewer exists on the public road, within 15 metres of the lands. Therefore, I conclude that the subject lands can be serviced by water infrastructure in the immediate vicinity of the lands.

In terms of the grounds of appeal as they relate to access to the lands, I agree with the appellant that access is constrained from the Rathbride Road for the reasons set out in the appeal. The subject lands adjoining the public road have limited road frontage (approximately 75 metres) which is clearly constrained due to its location on the approach to the railway bridge, which itself has a singular lane for traffic. Furthermore, the existing access to the lands on the Rathbride Road, at the foot of the bridge, forms part of a stacking lane for the signalised junction regulating access to the bridge, which would not be suitable or acceptable as an access to a new residential development. In this context, I also note the report of the consulting engineer submitted with the appeal which states that the Local Authority has indicated it would not agree with the proposed vehicular access arrangement from Rathbride Road to the subject lands, put forward previously by the appellant for a number of reasons, including that the entrance would create an additional traffic risk and risk to public safety, that it would constitute a traffic hazard by reason of inadequate sightlines and would further reduce the capacity and efficiency at the signal controlled shuttle system which currently operates at over capacity at various times of the day.

As noted by the appellant, the only other alternative way to access the appeal lands would be through adjoining third party lands to the north. These lands have the benefit of planning permission for a residential development, which has yet to be implemented.

Page 24 of the RZLT guidelines state: 'If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.'

Having regard to the foregoing, I consider that the works required to connect the land to road infrastructure are materially significant, requiring access to third party lands in private ownership, and therefore, criteria 653B(b) is not met.

- 7.6 I note the matter raised by the appellant concerning Objective F zoned lands within the appellant's landbank and the fact that the Local Authority's determination made no reference to these open space zoned lands. Under section 653J (1), an owner who is aggrieved with the determination of a local authority under section 653E may appeal that determination. Given that the Objective F zoned lands are not the subject of the Local Authority's determination, in my view, this matter should not be considered by the Board.

8.0 Recommendation

- 8.1 Having regard to the foregoing I consider that the lands identified as Parcel ID KELA00002819 do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. Therefore, I recommend that the board set aside the determination of the Local Authority and that the lands be removed from the final RZLT map.

3.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (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 Parcel ID KELA00002819 on the RZLT Final Map zoned Objective B: Existing Residential / Infill' are considered to be out of scope under the provision of Section 653B(b) of the Taxes Consolidation Act 1997, as amended. The lands adjoining the public road have limited road frontage which is significantly constrained due to its location on the approach to the railway bridge, which itself

narrows to a point to allow only one vehicle to pass at any one time. Furthermore, the existing access to the lands on the Rathbride Road, at the foot of the bridge, forms part of a stacking lane for the signalised junction regulating access to the bridge, which would not be suitable or acceptable as an access to a new residential development. As such, it is not reasonable to consider that the land has access to, or is connected to public infrastructure necessary for dwellings to be developed, in accordance with section 653B(b). The works required to connect the land to road infrastructure are considered materially significant, requiring access to third party lands in private ownership, and therefore, criteria 653B(b) is not met.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kildare County Council

Local Authority Reference Number: KCC-C231-4

Appeal by Tom Simpson 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 the 25th day of June 2024 in respect of the site described below.

Lands at: Rathbride Road, Kildare Town, 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 setting aside of the local authority determination in respect of lands identified as Parcel ID KELA00002819 on the final map and direct the local authority to remove these lands from the final map.

Reasons and Considerations

The lands identified as Parcel ID KELA00002819 on the RZLT Final Map zoned Objective B: Existing Residential / Infill' are considered to be out of scope under the provision of Section 653B(b) of the Taxes Consolidation Act 1997, as amended. The lands adjoining the public road have limited road frontage which is significantly

constrained due to its location on the approach to the railway bridge, which itself narrows to a point to allow only one vehicle to pass at any one time. Furthermore, the existing access to the lands on the Rathbride Road, at the foot of the bridge, forms part of a stacking lane for the signalised junction regulating access to the bridge, which would not be suitable or acceptable as an access to a new residential development. As such, it is not reasonable to consider that the land has access to or is connected to public infrastructure necessary for dwellings to be developed, in accordance with section 653B(b). The works required to connect the land to road infrastructure are considered materially significant, requiring access to third party lands in private ownership, and therefore, criteria 653B(b) is not met.

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.

John Duffy
Planning Inspector

8th October 2024