



An
Bord
Pleanála

Inspector's Report ABP-320394-24

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

Townland of Poulgour, Kilkenny, Co. Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

KK-C247-3

Appellant(s)

Cairn Homes Properties Limited

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1 The appeal refers to two separate but adjoining land parcels with a combined site area of circa 3.82 hectares located at William Robertson Way, Upper Whitebridge, townland of Poulgour, Kilkenny. This site is located approximately two kilometres to the southwest of Kilkenny City centre. The lands are located to the west of the William Robertson Way distributor road, which in turn is accessed off the N76, national secondary route. The lands are stated to be greenfield.
- 1.2 The surrounding lands are mostly in agricultural use and under grass, though there is significant residential development in the form of apartments and houses recently constructed and under construction to the south and southeast of the site, and lands further east of the distributor road are developed forming the western urban edge of Kilkenny City.

2.0 Zoning and Other Provisions

- 2.1 The subject site is located within the Kilkenny City Development Plan Boundary, which is part of the Kilkenny City and County Development Plan 2021 - 2027. The site is zoned 'New Residential' in the development plan, and which allows for residential development.
- 2.2 The site is located within an area designated as the Breagagh Valley development area. Full details are provided in Volume 2 of the development plan and Table 2.3 outlines the development criteria for development in this area. The subject lands are identified as land parcels K and L, requiring the implementation of road infrastructure and a school campus.

3.0 Planning History

Planning reference KK-C205, in 2023, the Planning Authority made a determination to include the lands within the RZLT map. This determination was upheld by An Bord Pleanála under Bord reference 316458-23.

Site:

I am not aware of any planning history pertaining to the subject lands.

Adjacent lands:

ABP reference 311933-21 Cairn Homes were granted planning permission by the Board for a development of 183 residential units, comprising a mix of apartments and houses, ranging in height from two to four storeys. This development is located south of the subject lands.

Planning reference 23/60037-In 2023, In 2023, Cain Homes were granted planning permission by Kilkenny County Council for a large-scale residential development comprising of 210 residential units located to the north-east of the subject lands,

Planning reference 21/962 Kilkenny and Carlow Education training Board were granted planning permission for the development of an educational campus development.

4.0 Submission to the Local Authority

The appellant made a submission to the Local Authority seeking to have their lands removed from the draft map as the development of these lands is subject to phasing arrangements within the Development Plan in relation to roads infrastructure and the provision of an educational campus and these restrict the activation of the subject lands for development. Neither has there been confirmation of feasibility from Uisce Eireann (UE) relating to the serviceability of the subject lands. Therefore, the land should be deemed out of scope and removed from the RZLT map.

5.0 Determination by the Local Authority

The local authority determined that the site fulfils the qualifying criteria to be included in the Final Map for the Residential Zoned Land Tax for the following reasons:

Reasons:

1. The land is zoned as New residential in the Kilkenny City and County Development Plan 2021, and
2. The site constitutes land satisfying the relevant criteria as set out in Section 653B of the taxes Consolidation Act 1997, as amended, for inclusion within the map.

6.0 The Appeal

Grounds of Appeal

The following points were made in support of the appeal:

- The development of these parcels of lands is subject to compliance with the requirements of the Kilkenny City and County Development Plan 2021 – 2027, and in particular are to be developed in accordance with the phasing requirements of development of the Breagagh Valley. The subject lands are referred to as Parcels K and L of plan area. Table 2.3 sets out development criteria for these lands.
- The subject lands are to be developed on a phased basis, with regard to the prior provision of roads and schools' infrastructure.
- The lands are not connected to the footpath's infrastructure and significant sections of new footpath across other holdings are required. The new section of footpath is not in the ownership of the appellants nor the Local authority.
- The lands are restricted by the need for new roads to enable the development of these lands.
- The delivery of services would require significant works.
- Road infrastructure has been provided in the area; other works are on lands outside of the appellant's control.
- Uncertainty regarding wastewater infrastructure to be provided by Uisce Éireann.

7.0 Planning Authority Response

No further comment received.

8.0 Assessment

8.1 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.”

8.2 The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned New Residential within the Kilkenny City and County Development Plan 2021-2027. The local Authority determined that the lands are in scope as per the provisions of Section 653B (a) of the Taxes Consolidation Act 1997, as amended. and that they remain on the RZLT map. The local authority set out that the lands are located 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.

8.3 The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 of the RZLT Guidelines set out the following: iii) Services to be considered of the guidelines state that *“in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, 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".

8.4 Section 4.1.1 ii) Review of land with planning permission of the guidelines states that *where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope....Significant works by the applicant to undertake the development which are a part of the plans and particulars lodged as a part of the permitted development should be given careful consideration in light of Section 4.1.1.(iii) of these Guidelines.*

8.5 Of relevance, I note that the appellants have been granted planning permission for two residential developments on adjoining lands under Board reference 311933-21 in 2021 and under planning reference 23/60037 by Kilkenny County Council in 2023. Both of these permissions were referenced within Section 3 of this report above and relate to development within the Breagagh lands.

8.6 Uisce Eireann (UE) have stated in their submission to the Planning Authority (dated 27th day of June 2024) that a watermain is accessible approximately 170 metres away from the subject lands along the public road or alternatively 90 metres away to the south via third party lands and that the public sewer is available approximately 220 metres south of the subject lands, via third party lands. Given that the appellants have two extant planning permissions on adjoining lands, I consider that the appellants could facilitate access to the public watermain and foul sewer through those sites with extant planning permissions in order to service the subject lands and, therefore, not requiring access via third party lands.

8.7 I also note from the UE capacity register (dated June 2023) that there is capacity available within the foul sewer networks within Kilkenny city at present, and in terms of water supply, that capacity is available, but that LoS improvement is required. The Planning Authority have set out that they are satisfied (following consultation with Uisce Eireann) that sufficient services and facilities have been provided or are accessible in order to allow for the development of the subject lands. On this basis, it is reasonable to

consider that there is some capacity available within the local water and wastewater networks to cater for development within the subject lands.

8.8 I also note that the local authority reference in their RZLT assessment report the up-to-date situation regarding the provision of roads infrastructure in the vicinity of the subject lands. In relation to the subject land parcels, identified as K & L, the Local Authority (LA) state that the Inner Relief Road between points 3 and 21 has been constructed, known as the William Robertson Way and the upgrade of the Callan Road between points 3 and 5 is also complete. The LA also set out that the distributor road between points 15 and 19 and points 19 and 21 has the potential to be delivered within lands partially owned by the appellants and/or to be delivered as part of the permitted educational campus within the adjoining lands to the east. On this basis, it is reasonable to consider that the subject lands are accessible or have the ability to access public, roads, footpaths and street lighting.

8.9. In relation to the provision of educational infrastructure, this is not identified as an impediment to development as set out within Section 653B of the Taxes Consolidation Act 1997, and in any event planning permission has been granted for an educational campus on lands immediately east of the subject lands.

8.10 Based on the information submitted and available, I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B.

8.11 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.

8.12 I, therefore, consider that the site should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development and there is no reason as to why development cannot take place here.

9.0 Recommendation

I recommend that the board confirm the determination of the Local Authority and that the indicated site be retained on the map.

10.0 Reasons and Considerations

The lands identified as KK-C247-3 (Parcel ID numbers KKLA00000116 and KKLA00000215) located on residentially zoned lands identified within the current Kilkenny County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The appellants have two extant planning permissions on adjoining lands relating to residential developments. The lands are located within an established urban area with documentary evidence from Uisce Eireann that services are 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 residential zoning objective that applies to these lands.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kilkenny County Council

Local Authority Reference Number: KK-C247-3

Appeal Cairn Homes Properties 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 Clare County Council on the 26th day of June 2024 in respect of the site described below.

Lands at: Poulgour, Breagagh Valley, Kilkenny City

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 numbers KKLA00000116 and KKLA00000215 under KK-C247-3 should remain on the RZLT map.

Reasons and Considerations

The lands identified as KK-C247-3 (Parcel ID numbers KKLA00000116 KKLA00000215) located on residentially zoned lands identified within the current Kilkenny County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. the issue of the cost to complete the wastewater network upgrades. This is not a matter for consideration under Section 653B of the Taxes Consolidation Act, 1997, as amended. The lands are located within an established urban area with documentary evidence from Uisce Eireann that services are 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 residential zoning objective that applies to these lands.

I confirm that the report represents my profession 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

10th day of October 2024