



An
Bord
Pleanála

Inspector's Report ABP-320431-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Lands at Leixlip South Gate, Leixlip, Co. Kildare.

Local Authority

Kildare County Council

Planning Authority Reg. Ref.

KCC-C231-3

Appellant

Cairn Homes Properties Ltd.

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as lands at Leixlip South Gate, Leixlip, Co. Kildare (Parcel ID KELA00002697 and KELA00001773) are located in the southwest of Leixlip, at the junction of the M4 and the R449. The site is currently under grass. The site adjoins the M4 at its southern boundary and the R449 at its western boundary. To the north, is the Harpur Lane residential development and to the east are the dwellings fronting Leixlip Gate Road.

2.0 Zoning and Other Provisions

The relevant plan is the Leixlip Local Area Plan 2020-2023, as extended up to 30th March 2026.

- The lands are zoned C: New Residential-To provide for new residential development.
- Table 13.1 Land Use Zoning Matrix indicates that 'dwelling' is Permitted in Principle on New Residential lands.
- Section 12.1 of the LAP identifies Leixlip Gate (Kilmacredock) as one of 3 no. Key Development Areas (KDAs) within Leixlip.
- The vision for Leixlip Gate KDA is "*The consolidation of the urban area of Leixlip through new residential development and open space and amenity, with a high quality permeable urban form and creating a built-up edge along the R449*".
- Under Section 12.4 of the LAP the subject site is to accommodate residential development
- Section 12.5 provides a phasing plan for the delivery of infrastructure and services within the KDAs. This Table Set out immediate, short term, medium term, long term and ongoing projects. I note that water and wastewater improvements are stated as 'on-going' in respect of the Leixlip Gate KDA.
- To the north-east of the site is Leixlip Gate, a protected structure (RPS Ref. B11-113) which was formerly part of Castletown Demesne. This structure is described as "walls / gates / railings."

3.0 Planning History

SHD ABP Ref. TA09.307223: This SHD application relates to the lands to the north of the subject site. On 10 September 2020 permission was granted for the construction of 239 no. residential units at the site.

PA Ref. 22/1226: This application relates to part of the subject site and provides for a new opening in the boundary wall to access the southern portion of the site and the provision of a temporary construction compound. The notification of decision to grant permission was issued 07 December 2022.

PA Ref. KCC-C108-21, ABP Ref. 316784: On the 12 September 2023, the Board decided to uphold the local authority's determination and retain the subject site on the RZLT map.

PA Ref. 2360485, ABP Ref. 319625-24: On the 17 July 2024 the Board decided to uphold the LA decision (05 April 2024) and grant planning permission for the construction of 229 no. dwellings at the subject site. Vehicular access and service connections are via the Harpur Lane residential scheme to the north.

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 that planning permission has yet to be secured at the site.

5.0 Determination by the Local Authority

The local authority determined that:

Having considered the submission, it has been determined that the site in question fulfils the qualifying criteria set out in Part 22A of the Taxed Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Section 28 Ministerial Guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map for the following reasons:

1. The subject lands are included in the Leixlip Local Area Plan 2020-2023 (as extended) and is zoned for 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. Section 653AH of the RZLT legislation provides that residential developments granted planning permission or under construction are considered 'in scope' in their entirety until such time as the development is completed and any ineligible areas of the site such as roads/footpaths/verges, permitted open spaces or other community services/infrastructure can be identified and removed from the RZLT maps as part of the annual review to be carried out by the planning authority.

Therefore, it is recommended that the subject lands identified as KCC-C231-3 at 'Leixlip Gate South', Leixlip, Co. Kildare be retained on the Final RZLT map.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The appellant is expecting to begin construction at the site under PA Ref. 2360485, ABP Ref. 319625-24 in early 2025.
- The commencement of development could be delayed by Judicial Review. The site should be removed from the RZLT map until a final grant of planning permission is secured.
- As yet undiscovered archaeological remains could occur at the site. The site should be removed from the RZLT map until the results of archaeological excavations are determined.
- The payment of RZLT should be deferred with reference to Section 653AF of the Act.
- The site is considered vacant or idle and should be removed from the RZLT map.

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 appeal submission has raised grounds that are outside of the scope of the Boards assessment including the deferral of payment of RZLT. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing the deferral of payment of RZLT under Sections 653AD or 653AF of the Act.

The subject site was the subject of a previous RZLT decision under PA Ref. KCC-C108-21, ABP Ref. 316784. Under APR Ref. 316784, the Board decided to uphold the local authority's determination and retain the subject site on the RZLT map. The previous grounds of appeal related to unknown archaeological materials at the site and the availability of water and wastewater connections. Since this previous decision was made, the character and context of the site has remained largely unchanged.

The site is zoned C: New Residential under the Leixlip LAP and, therefore, meets the criteria under Section 653B(a) of the Act.

The site immediately adjoins the Harpur Lane residential development to the north, the M4 to the south, Leixlip Gate Road to the east, and the R449 to the west. Given the proximity of the site to existing roads and to residential developments to the north,

it is reasonable to consider that the subject site is able to connect to existing roads and services. It is of relevance that planning permission was recently granted for residential development at the site under PA Ref. 2360485, ABP Ref. 319625-24. Under this permission, the proposed residential development will connect to existing roads and water infrastructure at the Harpur Lane development to the immediate north of the site. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 20 September 2024) indicates that there is spare capacity available at the Leixlip WWTP, which forms part of the Lower Liffey Valley Sewerage Scheme. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 20 September 2024) indicates that there is capacity available at the Greater Dublin Area Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Drawing from the above, I consider that there is sufficient capacity in the water network to serve the site. In light of the foregoing, I consider that the site meets the criteria under Section 653B(b) of the Act.

The Appellant states that there may be undiscovered archaeological remains at the site and requests that the lands be removed from the RZLT map on this basis. With reference to Page 9 of the RZLT Guidelines, the known extent of archaeological features or zone of notification should be excluded from the RZLT map under Section 653B(c). The subject site does not contain any structures on the Sites and Monuments Records or Zones of Archaeological potential or any buildings on the National Inventory of Architectural Heritage or Record of Protected Structures, therefore, no exclusions from the RZLT map are required on this basis.

The Archaeological Assessment submitted to the LA in support of the recent planning application PA Ref. 2360485, ABP Ref. 319625-24, states that geophysical surveys undertaken at the site noted the potential for burnt mound activity. Proposed mitigation measures include further archaeological testing and the preservation of archaeological materials either in-situ or by record. I note that Condition 24 of the Board's decision under ABP Ref. 319625-24 requires the implementation of mitigation measures, the supervision of groundworks by an archaeologist, and the full excavation of any archaeological materials that cannot be retained in-situ. On the basis that this

proposed development was granted planning permission by both the LA and the Board and that the decision provides for the full excavation of any archaeological materials discovered, it is reasonable to consider that the potential presence of archaeological material at the site does not preclude the provision of dwellings at this location. There are no physical conditions or constraints at the site that would preclude the provision of dwellings, therefore, the site meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

Page 9 of the RZLT Guidelines states that an applicant may apply for a repayment of tax where archaeological or historic remains are discovered after lands have been placed on the maps. This provision occurs under Section 653AD of the Act and is, therefore, outside of the Boards scope for assessment, which is limited to Section 653B.

The appellant states that the site should be removed from the RZLT map until a final grant of planning permission is secured. The subject site meets the criteria for inclusion on the RZLT map under Sections 653B(a), (b) and (c), as discussed above. I note that delays to gaining planning permission, whether due to Judicial Review or otherwise, are not listed as a criterion for exclusion from the RZLT map under Section 653B(i), (ii), (iii), (iv), or (v). Page 46 of the RZLT Guidelines states that there are provisions for the deferral of payment of the tax where a planning decision has been judicially reviewed however, these provisions do not occur under Section 653B and are, therefore, outside of the scope of the Board's assessment.

The Grounds of Appeal refer to the site being vacant or idle. Section 653B(ii) of the Act, which provides to the exclusion of sites that are not vacant or idle, refers only to lands zoned for a mixture of uses under Section 653B(a)(ii) Act. As the site is zoned for resident development, Section 653B(ii) is not applicable in this instance.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Lands at Leixlip South Gate, Leixlip, Co. Kildare (Parcel ID KELA00002697 and KELA00001773) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising

that warrant exclusion of the subject lands from the final map. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT map.

9.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority 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 Lands at Leixlip South Gate, Leixlip, Co. Kildare (Parcel ID KELA00002697 and KELA00001773) are located on lands zoned C: New Residential and are, therefore, considered in scope of section 653B(a). The site immediately adjoins new residential development to the north and, therefore, it is reasonable to consider that the site is able to connect to roads and services at this location. The UE capacity registers published June 2023, accessed 20 September 2024, indicate that there is spare capacity in the water networks to serve the site. The site does not contain any structures on the Sites and Monuments Records or Zones of Archaeological potential or any buildings on the National Inventory of Architectural Heritage or Record of Protected Structures and, therefore, meets the criteria for inclusion under Section 653B(c). Planning permission for residential development was recently granted by the local authority and An Bord Pleanála under PA Ref. 2360485, ABP Ref. 319625-24, therefore, it is reasonable to consider that there are no constraints at the site in respect of archaeological materials that would preclude the provision of dwellings. 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. The deferral of payment of RZLT does not fall within the remit of the Board's assessment, which is limited in scope to Section 653B, as per Section 653J of the Act.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kildare County Council

Local Authority Reference Number: KCC-C231-3

Appeal by Cairn Homes Properties Ltd. care of McGill Planning 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 Kildare County Council on the 25 day of June 2024 in respect of the site described below.

Lands at: Lands at Leixlip South Gate, Leixlip, 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 determination of the local authority and direct the local authority to retain the lands identified as Lands at Leixlip South Gate, Leixlip, Co. Kildare (Parcel ID KELA00002697 and KELA00001773) on the final map.

Reasons and Considerations

The lands identified as Lands at Leixlip South Gate, Leixlip, Co. Kildare (Parcel ID KELA00002697 and KELA00001773) are located on lands zoned C: New Residential and are, therefore, considered in scope of section 653B(a). The site immediately adjoins new residential development to the north and, therefore, it is reasonable to consider that the site is able to connect to roads and services at this location. The UE capacity registers published June 2023, accessed 20 September 2024, indicate that there is spare capacity in the water networks to serve the site. The site does not contain any structures on the Sites and Monuments Records or Zones of Archaeological potential or any buildings on the National Inventory of Architectural Heritage or Record of Protected Structures and, therefore, meets the criteria for inclusion under Section 653B(c). Planning permission for residential development was recently granted by the local authority and An Bord Pleanála under PA Ref. 2360485, ABP Ref. 319625-24, therefore, it is reasonable to consider that there are no

constraints at the site in respect of archaeological materials that would preclude the provision of dwellings. 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. The deferral of payment of RZLT does not fall within the remit of the Board's assessment, which is limited in scope to Section 653B, as per Section 653J of the Act.

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: 26 September 2024