



An
Bord
Pleanála

Inspector's Report ABP-320442-24

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 Poulgour, Breagagh Valley, Kilkenny.

Local Authority

Kilkenny County Council

Planning Authority Reg. Ref.

KK-C247-2

Appellant

Mary Murphy

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Poulgour, Breagagh Valley, Kilkenny are located in the southwest of Kilkenny, on the north side of Wetlands Road/St. Catherines Avenue. I note that no Parcel ID is attributed to the site. The site is currently under grass and appears to form part of a wider agricultural landholding. The site adjoins a farmyard and residential dwelling to the west and new residential development at Nyne Park to the south. The site adjoins agricultural lands to the north and to the east.

2.0 Zoning and Other Provisions

The relevant plan is the Kilkenny City and County Development Plan 2021-2027, which came into effect on 15 October 2021.

- The site is zoned New Residential - To protect, provide and improve residential amenities. Dwellings are listed as a permitted use on New Residential lands, under Section 2.9.4 of the Plan.
- Section 2.2.3 of Volume 2 of the Plan describes the principles for development of lands in Breagagh Valley. It is stated that road works are required to release development in this area, including a distributor road to connect the N76 to the Circular road and widening of the R695.
- The site forms part of Parcel N as shown in Figure C23 'Bregagh Valley Development Parcels'.
- Appendix N: Infrastructure Assessment of the Plan designates the site for Phase 1 Residential Development. The lands form part of Site 16 of Appendix N, which is designated as Tier 1 on the basis that it will be serviced within the Plan period.

3.0 Planning History

There is no recent of relevant planning history at the subject site.

PA Ref. KK-C205-4, ABP Ref: 316458: Relates to lands to the immediate north of the subject site. On the 21 August 2023, ABP confirmed the LA determination to include the lands to the north of the subject site on the basis that adequate services and

facilities have been developed in the area to allow residential development on the lands.

PA Ref. 21962: Relates to lands to the east of the site. On 29 July 2022 planning permission was granted to Kilkenny and Carlow Educational Training Board for the development of a school campus to the east of the subject site.

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 the site is not connected to footpaths or lighting.

5.0 Determination by the Local Authority

The local authority determined that:

By Order dated 25/06/2024 it was determined to include the above land on the final map of the Residential Zoned Land Tax for the following reasons:

- This land is zoned as New Residential in the Kilkenny City and County Development Plan, 2021, and
- The site constitutes land satisfying the relevant criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended, for inclusion in the map.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The lands form part of a working farm.
- The public lighting and paths at William Robertson Way is under 3rd Party ownership and the subject site cannot connect to these services.
- Precedent exists for the exclusion of lands on the basis of lack of footpaths under ABP Refs. 316314 and 316349.

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 Grounds of Appeal state that the subject site is in agricultural use. In this regard, I note that the site is zoned New Residential under Development Plan and, therefore, meets the criteria for inclusion under Section 653B(a)(i) of the Act. Commercial development is only excluded on lands zoned primarily for residential use where the trade or profession being undertaken is subject to commercial rates, as per Section 653B(i) of the Act. I note that page 11 of the Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022 (RZLT Guidelines) states that *“Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates”*. As agriculture is not subject to commercial rates, I do not consider that the site meets the criteria for exclusion under Section 653B(i) of the Taxes Consolidation Act 1997, as amended (the Act). In this way, the grounds of appeal should be dismissed.

The Appellant states that the site is not connected to existing public footpaths or lighting. It is stated that the William Robertson Way, which is referred to in the LA assessment, is under Third Party control and does not constitute a public footpath.

The LA assessment dated 25 June 2024 states that there are no footpaths or public lighting on St. Catherine's Avenue at the subject site. This assessment states that the footpaths and lighting at William Robertson Way, located 250 metres to the east of the

site, are under public ownership. It is further stated that the provision of public lighting and footpaths would be possible as part of any future development at the site.

I note that there are existing footpaths and lighting on part of St. Catherine's Avenue, which terminate circa 95 metres to the east of the subject site. It is reasonable to assume that St. Catherine's Avenue is under the control of the LA and, therefore, footpaths and lighting could be provided without the requirement for Third-Party consents. The subject site immediately adjoins St. Catherine's Avenue, therefore, no Third-Party consent would be required to connect to footpaths or lighting on this road. In addition, the recently completed residential development at Nyne Park, which is on the opposite side of the road to the subject site, has footpaths and provides a pedestrian route through Sevilla Grove to the N76 to the south. I consider that these existing facilities are sufficient to serve the subject site. Having regard to the foregoing, it is reasonable to consider that the subject site can connect to footpaths and public lighting. I consider that the site meets the criteria for inclusion in the RZLT map under Section 653B(b) of the Act and the grounds of appeal should be dismissed.

Section 2.2.3 of the Plan states that road upgrade works are required to release the lands at Breaghagh Valley for development. I note that these works have been completed. It is therefore reasonable to consider that the site can connect to existing roads and that there is capacity to serve development.

For reference, I note that the Uisce Eireann (UE) waste water capacity register published June 2023 (accessed 6 September 2024) indicates that there is capacity available in the Kilkenny City and Environs WWTP. The UE 10-year Water Supply Capacity Register Published June 2023 (accessed 6 September 2024) indicates that there is capacity available in the Kilkenny City Water Resource Zone with level of service improvement required. These works would not preclude development or inclusion on the RZLT map with reference to page 8 of the RZLT Guidelines. There are no physical conditions 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.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as lands at Poulgour, Breaghagh Valley, Kilkenny 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.

9.0 REASONS AND CONSIDERATIONS

The lands identified as lands at Poulgour, Breaghagh Valley, Kilkenny, are zoned New Residential and are considered in scope of section 653B(a). The existing agricultural use of the site is not subject to commercial rates and, therefore, the site does not meet the criteria for exclusion from the RZLT map under Section 653B(i) of the Taxes Consolidation Act 1997, as amended. On the basis of its proximity to existing footpaths and lighting, it is considered reasonable that the subject site meets the criteria for inclusion on the RZLT map under Section 653B(b) of the Taxes Consolidation Act 1997, as amended. Evidence from the UE capacity register confirms that services are available and that there is sufficient capacity to serve the lands. 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.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kilkenny County Council

Local Authority Reference Number: KK-C247-2

Appeal by Mary Murphy 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 Kilkenny County Council on the 26 day of June 2024 in respect of the site described below.

Lands at: Lands at Poulgour, Breagagh Valley, Kilkenny.

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 Poulgour, Breagagh Valley, Kilkenny on the final map.

Reasons and Considerations

The lands identified as lands at Poulgour, Breagagh Valley, Kilkenny, are zoned New Residential and are considered in scope of section 653B(a). The existing agricultural use of the site is not subject to commercial rates and, therefore, the site does not meet the criteria for exclusion from the RZLT map under Section 653B(i) of the Taxes Consolidation Act 1997, as amended. On the basis of its proximity to existing footpaths and lighting, it is considered reasonable that the subject site meets the criteria for inclusion on the RZLT map under Section 653B(b) of the Taxes Consolidation Act 1997, as amended. Evidence from the UE capacity register confirms that services are available and that there is sufficient capacity to serve the lands. 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.

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.

Sinead O'Connor

Planning Inspector

Date: 10 September 2024