



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320452-24

---

#### 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

Raheny Farm, Lusk, Co. Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

FIN-C657-RZT 24/17

#### Appellant(s)

Simon Butterly

#### Inspector

Fergal Ó Bric

## **1.0 Site Location and Description**

- 1.1. The subject lands are located on the northern side of the Raheny Lane, Lusk, on the eastern perimeter of the settlement, in north County Dublin. The lands are stated to be currently in agricultural use. The subject lands are stated to comprises an area of 0.73 hectares and the parcel id number is FL0000001794.

## **2.0 Zoning and other provisions**

- 2.1. The site is zoned RS – Residential and is within the defined Development Boundary for Lusk under the Fingal County Development Plan 2023-2029.

## **3.0 Planning History**

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

## **4.0 Submission to the Local Authority**

- 4.1. The appellant made a submission to the Local Authority seeking to have his land removed from the RZLT map. He raises the following issues:
- There is no access to foul drainage at this location.
  - There has been flooding issues within residential schemes further west of the subject lands.
  - The public road is not served by public footpaths nor street lighting.
  - A major upgrade of electricity and water infrastructure would be required for large scale residential development.
  - The submission states that the lands form part of an active family farm and food supply enterprise providing supplies and employment for local residents.
  - Under Section 653B of the Taxes Consolidation Act, for lands to be deemed in scope, they must have access to services or be able to be connect to services. The lands do not meet these criteria and, therefore, do not fall in scope.

## **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 or 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 2021 at Section 653B(c).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The subject lands, comprise approximately 1.5 acres and form part of a larger family farm holding comprising approximately 98 acres. These lands have been farmed for the last two generations by the Butterly family.
- The family land is in constant use for the growing of vegetables and wheat crops.
- The subject lands form part of an active family farm and currently broccoli is growing within them. The lands are integral to the operation and success of

the Butterly horticultural enterprise which supply's locally grown produce in the Lusk and North Dublin area.

- There is no access to foul drainage at this location.
- There has been flooding issues within residential schemes further west of the subject lands.
- The public road is not served by public footpaths nor street lighting.
- A major upgrade of electricity and water infrastructure would be required for large scale residential development.
- Under Section 653B of the Taxes Consolidation Act, for lands to be deemed in scope, they must have access to services or be able to be connect to services. The lands do not meet these criteria and therefore, do not fall in scope.

## 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 new residential communities subject to the provision of the necessary social and physical infrastructure*. 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 appellant sets out that the lands are part of an active farm and are integral to the operation and success of the family vegetable business which supply's locally grown produce to the Lusk and North Dublin area.
- 7.3. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned

for residential use, and not for mixed use, and, therefore, the exemption under part (c)(ii) does not apply.

- 7.4. The fact that the lands are in active and established agricultural use does not qualify for omitting the lands from the map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.
- 7.5. With respect to wastewater and water connections, the local authority set out within their RZLT assessment that a referral response was received from Uisce Eireann (UE) and their own Water Services Section hat the subject lands are serviced or serviceable with connections to the wastewater (within 10 metres of the subject lands) and watermains networks, within 2 metres of the subject lands. Connection can be achieved along the public road via lands in local authority control. Such connections would be reasonably included as part of any development proposition for the site. With respect to capacity, Uisce Eireann's online capacity register (dated June 2023) state that there is water and wastewater capacity available in Lusk.
- 7.6. With respect to pedestrian infrastructure, the subject lands front onto Raheny Lane, where there are presently no public footpaths or streetlighting. However, the local authority state that a new residential development is under construction on the opposite side of Raheny Lane from the subject lands and that a new public footpath has been constructed along its site frontage. Therefore, it is reasonable to consider that the subject lands has access to a footpath and streetlighting in proximity (opposite) the subject lands and that connectivity to same from the subject land is easily achievable.
- 7.7. Therefore, in my opinion, the subject lands should be considered to be in-scope.
- 7.8. The fact that the lands are in active and established agricultural use does not qualify for excluding the lands from the map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands.

## 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

9.1. The lands identified as FIN -C567-RZT24-17, parcel ID number FL0000001794.

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. I acknowledge that the lands form part of an active farm, however the agricultural activities are not liable to commercial rates. The lands are located within an established urban area with services 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 RS zoning objective that applies to these lands. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## 10.0 Recommended Draft Board Order

**Taxes Consolidation Act 1997 as amended.**

**Planning Authority:** Fingal County Council

**Local Authority Reference Number:** FIN -C567-RZT24-17

**Appeal** Simon Butterly 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 27<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Raheny Farm, Lusk, 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:

9.2. The Board confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number FL0000001794 and Local Authority reference number FIN -C567-RZT24/17 should remain on the RZLT map.

## **Reasons and Considerations**

9.3. The lands identified as FIN -C567-RZT24/17, parcel ID number FL0000001794.

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. I acknowledge that the lands form part of an active farm, however the agricultural activities are not liable to commercial rates. The lands are located within an established urban area with services 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 RS zoning objective that applies to these lands. The site does satisfy the criterion for inclusion on the map set out in section 653B of the Taxes Consolidation Act 1997, as amended.

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

26<sup>th</sup> day of September 2024