



An
Bord
Pleanála

Inspector's Report ABP-320471-24

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

Lower Main Street, Rush, Co. Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZT24/36-A

Appellant(s)

Gerard & Michael Leonard

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject lands are located on the northern side of Lower Main Street, Rush, to the rear of a residential property, Kinvarna. The lands to the rear of the residential property are in agricultural land use. It is situated adjacent to residential dwellings in the town centre of Rush. The subject lands are stated to comprise an area of 0.43 hectares and the parcel id number is FL0000002926.
- 1.2. There is a concurrent RZLT appeal in the name of Gerard & Michael Leonard under Board reference 320474 in relation to lands at Skerries Road, Rush.

2.0 Zoning and other provisions

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

3.0 Planning History

PA reference number RZLT132/22, in 2023, Fingal County Council determined that the lands should be included within the RZLT map. ABP reference 316665-23, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands on the RZLT map.

4.0 Submission to the Local Authority

- 4.1. The appellants made a submission to the Local Authority seeking to have their land removed from the RZLT map. The submission states that the lands form part of an active family farm and food supply enterprise.
- 4.2. The subject lands are greenfield and part of a wider horticultural business, the lands relate to sustainable agricultural practices which are a key aspect of the local economy. The subject lands are actively used for sustainable agricultural practices which are a key aspect of the local economy. The RZLT zoning on these lands poses a threat to the local economy of Rush. Reference is made to the document: Our Rural Future Rural Development Policy 2021-2025.

- 4.3. The Fingal County Development Plan recognises the significant tradition of market gardening in Rush. The application of the RZLT designation to these lands poses a significant threat to the local agricultural economy and the survival of long-standing farming enterprise.
- 4.4. Further information was submitted by the appellants to the local authority in relation to the following: Proof of ownership of each individual plot of land and copies of land folios and ordnance survey maps identifying the extent of the relevant plots of land(s).

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 lands are integral to the operation and success of the G & M Leonard horticultural enterprise which supply's locally grown produce to the Rush and North Dublin area as well as to a number of national supermarket chains.
- The subject lands are part of a horticultural enterprise that employs six family members. The family homes are located on the wider Leonard family holding.
- They have included commentary from a political representative regarding the inclusion on of agricultural lands within scope for the purpose of the RZLT.

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 appellants set 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 Rush 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 primarily 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 form that the subject lands are serviced or serviceable with connections to the wastewater and watermains networks. Connection can be achieved along the Lower Main Street Rush, 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 registers as of June 2023 state that capacity is available in Rush.
- 7.6. With respect to pedestrian infrastructure, the subject lands are located just behind the Lower Main Street in Rush where pedestrian infrastructure is available and the footpath network can be easily connected into.
- 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 RZLT 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-RZT24/36-A, parcel ID number FL0000002926 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-RZT24/36-A

Appeal Gerard & Michael Leonard 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 27th day of June 2024 in respect of the site described below.

Lands at: Lower Main Street, Rush, 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:

The Board confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number FL0000002926 and Local Authority reference number FIN -C567-RZT24/36-A should remain on the RZLT map.

Reasons and Considerations

The lands identified as FIN -C567-RZT24/36-A, parcel ID number FL0000002926 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

26th day of September 2024