



An  
Coimisiún  
Pleanála

## Inspector's Report ACP-323273-25

### Development

Inclusion of the land on the residential zoned land tax final map on lands at Kinsealy Lane, Malahide, County Dublin.

### Location

Kinsealy Lane, Malahide, County Dublin.

### Planning Authority

Fingal County Council

### Local Authority Reg. Ref.

FIN-C790-RZD26-27

### Appellant

Anne & Maria Murphy

### Inspector

Frank O'Donnell

## 1.0 Site Location and Description

- 1.1. The site identified as FIN-C790-RZD26-27 (Land Parcel ID number FL0000002700) is located on Kinsealy Lane, Malahide, Co. Dublin. The site comprises an agricultural yard/ hardstanding area. The remainder of the agricultural yard, located to the immediate north and further to the northwest, includes agricultural sheds and hardstanding areas. The site is surrounded to northwest, northeast, east, south and west by established residential development. The subject Land Parcel has a stated area of 0.07 hectares.
- 1.2. There are 2 no. separate concurrent RZLT Appeals relating to 2 no. land parcels to the immediate north and further to the northwest, as follows:
  - **Case Ref. No. ACP-323274-25 (Local Authority Ref. No. FIN-C790-RZD26-26).**
  - **Case Ref. No. ACP-323238-25 (Local Authority Ref. No. FIN-C790-RZD26-25).**

## 2.0 Zoning

- 2.1. The site which is the subject of this Appeal is zoned 'RS Residential' in the Fingal Development Plan, 2023 to 2029. The Zoning Objective is to *'Provide for residential development and protect and improve residential quality.'* The Zoning Objective Vision is stated to be to *'Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.'*
- 2.2. Fingal Development Plan, 2023 to 2029 comprises a main Written Statement, a total of 12 no. Appendices, accompanying Reports, Supplementary Information and Maps and Sheets.
- 2.3. Chapter 2 of the Written Statement relates to Planning for Growth, Core Strategy, Settlement Strategy.
- 2.4. Chapter 13 of the Plan relates to Land Use Zoning.
- 2.5. Chapter 14 of the Plan relates to Development Management Standards.

### 3.0 Planning History

3.1. On the subject Appeal site and adjacent lands to the immediate north and further to the northwest:

- **F01A/0609:** Permission for Demolition of existing agricultural shed and outhouses and the erection of replacement agricultural buildings comprising of a pair of semi-detached sheds with lean-to shed to side of one unit and detached domestic garage. Permission was REFUSED in July 2001 for 2 no. reasons relating to i) Material Contravention of Residential Zoning Objective and ii) Design/ Visual Impact.
- **F02A/0193:** Permission to demolish existing outhouses, extend existing main agricultural barn to side, with lean to barn extension to rear of existing and proposed re-roof existing small barn and extend roof onto existing and proposed main barn in a lean to style to provide additional infill barn, also to erect a detached single garage. Permission was GRANTED in June 2002 subject to 9 no. conditions.
- **F09A/0336:** Permission for the construction of a detached agricultural shed for the storage of agricultural machinery and equipment. Permission was GRANTED in April 2010 subject to 9 no. conditions.
- **F20A/0526:** Permission for a single storey vegetable chill shed on the existing farm yard. Permission was GRANTED in January 2021 subject to 12 no. conditions.
- **Case Ref. No. ABP-316648-23 (Local Authority Ref. no. RZLT144/22):** The Board decided to confirm the determination of the Local Authority that the lands are in scope of Section 653B of the Taxes and Consolidation Act 1997, as amended. A decision was issued on 23<sup>rd</sup> August 2023.
- **Case Ref. No. ABP-320364-24 (Local Authority Ref. No. FIN-C657-RZLT 24/29):** The Board decided to confirm the determination of the Local Authority that the lands are in scope of Section 653B of the Taxes and Consolidation Act 1997, as amended. A decision was issued on 3<sup>rd</sup> October 2024.

- **Case Ref. No. ABP-320374-24 (Local Authority Ref. No. FIN-C657-RZLT24-30):** The Board decided to confirm the determination of the Local Authority that the lands are in scope of Section 653B of the Taxes and Consolidation Act 1997, as amended. A decision was issued on 3<sup>rd</sup> October 2024.
- **Case Ref. No. ACP-323274-25 (Local Authority Ref. No. FIN-C790-RZD26-26):** A Decision is pending.
- **Case Ref. No. ACP-323274-25 (Local Authority Ref. No. FIN-C790-RZD26-27):** A Decision is pending.

#### 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 comprises a number of agricultural structures which support a produce storing and packaging business on site which in turn support a family farm. The site is integral to supporting this business and should therefore be removed from the RZLT maps. The inclusion of this site on the RZLT maps would be to the detriment of this local commercial business.

#### 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 in question fulfils the qualifying criteria set out in Part 22A of the Taxes and Consolidation Act, 1997 as introduced by the Finance Act 2021 (as amended) and the Section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' June 2022, for inclusion on the RZLT Maps.

The reasons set out by the Local Authority are as follows:

- 1) The land in question is included in a development plan or 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 of 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 at Section 653B.

## **6.0 The Appeal**

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

- Reason no. 1
  - The Appellants accept reason no. 1 of the Local Authority decision that the land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development. The Appellants state that this was not disputed by them in the initial submission to the Local Authority.
- Reason no. 2
  - The Appellants accept reason no. 2 of the Local Authority decision that the land is serviced meaning 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. The

Appellants state that the fact the site can be connected to public infrastructure and facilities was not disputed in the initial submission to the Local Authority.

- Reason no. 3
  - The Appellants refute Reason no. 3 of the Local Authority decision that 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. The Appellants consider there are physical conditions on the site which affect the development capacity of the lands for residential development. In particular, the Appellants note that a family farm operates on the site within a number of agricultural buildings. The Appellants note that specific to this appeal site/ submission the subject yard has been specially surfaced to support heavy vehicles which are associated with the farm in order to access the agricultural buildings and that, as such, this is considered to prevent residential development on the lands. In addition to this, the Appellants submit that the subject appeal/ submission site includes an existing access road off Hazelbrook to the south and provides for access for large vehicles which include articulated trucks. The said trucks are stated to collect fresh produce on a daily basis. The existing access is stated to facilitate turning movements within the site for articulated trucks which then reverse to collect produce within the site. In order for the business to be sustained and continue operating it is stated that the width and location of this access point must be sustained. The Appellants submit there is very little space within this yard for any new development, including residential development and associated private open space and car parking and that, in order to accommodate any residential development on the lands, the business would be forced to relocate or close. The Appellants state that the family cannot afford to face such a reality.

- Reason no. 4
  - The Appellants refute reason no. 4 of the Local Authority decision that 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 at Section 653B (c). The Appellants state that the reason is refuted as they can confirm that a long-standing agricultural/ commercial use, of five generations has remained in use on the subject land parcel. The Appellants state that this agricultural use relates to storing and packaging vegetables grown on a nearby family farm and that while the residential element of the land parcel comprises the western area of the lands, the agricultural use of the lands comprises the eastern and northern portions of the land parcel, as shown in Figure 7.0 of the Appellants Appeal submission. The Appellants submit that, as such, the land parcel comprises an active agricultural use supported by the yard areas and agricultural structures and that the yard area provides the business with the required only access for large vehicles to enter the land parcel and move within it. This yard area is stated to also be used for the purposes of a parking area for tractors and other heavy machinery, both of which are stated to be essential to the running of the business on this subject land parcel and the family farm. The subject appeal site, which comprises the subject yard area and access, are stated to be crucial to the operation of the commercial business.
- Use of the Lands/ Employment/ Crucial to the operation of this rural business
  - The operations of the subject site provide for food production in the area and support a number of employees. The family farm, from where the produce packaged on site originates, employs 11 no. person's full time. The yard area which is the subject of this appeal is stated to be crucial to the operation of the site. The Appellant state that the lands provide an employment service and economic contribution to the area.

- Further Reasoning:
  - The wider land parcel subject to the Residential Zoned Land Tax comprises a farmyard. The subject site to which this appeal submission relates, although small in scale, forms a vital component of the Appellants family farm. Owing to the importance of the lands in supporting the continued economic viability of the lands, the Appellants are not in a financial position to sell the property. There is a very real prospect that the family business will be forced to close owing to the requirement to pay this tax and this will present additional knock on economic impacts to other supporting businesses.
  - The Irish Horticulture Sector is already volatile, and the addition of this tax will serve to force such businesses to leave the sector which presents knock on cost implications for consumers.
  - The Appellants are not land hoarders, the lands are not idle nor speculative and are essential for the business to fully function.
  - The Appellants submitted a rezoning request to the Local Authority on 1<sup>st</sup> April 2025 regarding the current situation of the lands. The rezoning request is stated to have been in line with the provisions of the Residential Zoned Land Tax – Change in zoning of lands subject to existing economic activity, Guidelines for Planning Authorities, December 2024 and, in particular Policy Objective 1 a). The said rezoning request was refused by the Local Authority. Owing to the specific set out circumstances associated with the subject land parcel and family business, which has operated over generations, has benefited from significant investment, provides local employment and are part of a balanced approach to ensuring a variety of uses in support of sustainable communities, the Appellant submits that the Commission should remove the subject lands/ land parcel from the Draft 2026 Residential Zoned Land (RZLT) Map.



## **6.2. Response of the Local Authority**

- 6.2.1. A Response dated 19<sup>th</sup> August 2025 was received from the Local Authority. The Local Authority state the appeal submission has been considered and that, with regard to the day to day agricultural uses, they are not excluded from the Residential Zoned Land Tax (RZLT) as per the relevant Finance Act. The Local Authority state the appeal submission has been examined, including the planning history of the lands, that they have no further comment to make and that the Commission is requested to uphold the determination of the Local Authority.

## **6.3. Prescribed Bodies**

- 6.3.1. The subject appeal was referred by An Coimisiún Pleanála to Uisce Éireann and the Development Applications Unit (DAU) of the Department of Housing, Local Government and Heritage for comment however no responses were received at the time of writing this report.

## **7.0 Assessment**

- 7.1. The Grounds of Appeal have been fully considered. Under Section 653J of the Taxes Consolidation Act 1997 as amended, the Commission'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".*

- 7.2. 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.

- 7.3. The subject lands are zoned RS Residential in the current Fingal Development Plan, 2023 to 2029.
- 7.4. The lands are currently served by an existing access and there is no impediment to future access identified. Therefore, it is reasonable to assume that the site can be assessed from the public road.
- 7.5. In relation to wastewater and water connections, the Local Authority set out within the RZLT assessment that the subject lands are serviced or serviceable with connections to the wastewater and watermains networks. The subject RZLT appeal was referred to Uisce Éireann for comment however no response was received at the time of writing this report. There is no evidence on the subject RZLT file to suggest there are any wastewater capacity issues in the local wastewater treatment plant.
- 7.6. Therefore, it is reasonable to consider the lands is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.
- 7.7. Regarding the fact that the lands are used as part of the Appellants Family horticultural business, the fact that the lands zoned RS Residential are in agricultural use does not qualify for omitting the lands from the map under Section 653B. 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 '653B 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, therefore, the exemption under part 653B ii) does not apply.
- 7.8. For clarity, with regard to residential zoned land, and mixed-use zoned land, sections 653B (i) and 653B (ii) respectively identify where certain uses may be excluded from the tax measure:

Operating Uses on Residential Zoned Lands- *With reference to land that is included in a development plan or local area plan and is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future residential community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates. Local Authorities should seek input from their Rates Offices in this regard.*

*For clarity, existing uses such as shops, cafes and similar commercial uses which would be utilised by a residential community on a day-to-day basis and support the sustainable development of the community are considered to be exempted from scope. **Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates** (Section 3.1.2 Exclusions from the Map Pg. 11 Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022).*

- 7.9. Therefore, the use for agriculture is not exempt from the map under Section 653B.
- 7.10. With specific reference to the ground of appeals and the request for rezoning, the Commission will note that the zoning of land and/or variation of the Development Plan or Local Area Plan is a reserved function and not a matter for the Commission. The Commission will also note that provision to request land be rezoned is contained in Section 114(b) of the Finance Act 2024, which amends section 653I of the Taxes Consolidation Act 1997 and facilitates requests to be made to the relevant local authority between 1 February and 1 April 2025, inclusive, with a requirement for the Local Authority to provide written acknowledgement of the request to the landowner by 30 April 2025. The Local Authority refused the Appellant re-zoning request.
- 7.11. In summary, the fact that the lands are in agricultural (horticultural) use does not qualify for omitted the lands from the map under Section 653B. The land use zoning assigned to the lands is a statutory function of the Local Authority (Fingal County Council) and not a matter from the Commission. The Appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes and Consolidation Act 1997 as amended and the Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022.

- 7.12. Owing to the forgoing, it is my opinion that the subject lands are in scope as per the provisions of Section 653B.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I consider that the lands identified as FIN-C790-RZD26-27 (Land Parcel IDs Land Parcel IDs FL0000002700) 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 other matters arising that would warrant exclusion of the subject lands from the final map. The fact that the lands are in use for agriculture does not exempt them from the map under Section 653B.
- 8.2. 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.
- 8.3. I recommend that the Commission 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-C790-R2D26-27 (Parcel ID no. FL0000002700), located on RS-Residential zoned lands identified within the current Fingal County Development Plan 2022 to 2028, are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The lands form part of an established horticultural enterprise however, they are zoned for residential purposes. The subject lands are located within an established urban area with services available, and no capacity or other reasons, including established horticultural activities 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 satisfies the criterion for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997, as amended.

- 9.2. 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.

## **10.0 Recommended Draft Commission Order**

### **Taxes Consolidation Act 1997, as amended.**

**Local Authority:** Fingal County Council

**Local Authority Reference Number:** FIN-C567-RZLT 26-27.

**Appeal:** Anne and Maria Murphy 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 25th day of June 2025 in respect of the site described below.

**Lands at:** Kinsealy Lane, Malahide, County Dublin.

### **Decision**

The Commission 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 Commission confirms the determination of the Local Authority and direct the Local Authority to retain the lands identified as Parcel ID number FL0000002700 and Local Authority reference number FIN-C567-RZLT 26-27 on the RZLT map.

### **Reasons and Considerations**

The lands identified as FIN-C790-R2D26-27 (Parcel ID no. FL0000002700), located on RS-Residential zoned lands identified within the current Fingal County Development Plan 2022 to 2028, are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The lands form part of an established horticultural enterprise however, they are zoned for residential purposes. The subject lands are located within an established urban area with services available, and no

capacity or other reasons, including established horticultural activities 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 satisfies the criterion for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997, as amended.

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.

*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.*

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Frank O'Donnell  
Planning Inspector

16<sup>th</sup> October 2025