



21/12/2022

Planning Office,  
Kilkenny County Council  
County Hall  
Kilkenny,

**Ref: Submission under Section 80 - 653D of the Finance Act 2021 – Residential Zoned Land Tax Draft Map - Lands at Lacken Lodge, Dublin Road, Leggettsrath West, Kilkenny.**

**Ownership**

██████████ is the owner of an interest in expired leaseholds on unregistered land at Leggettsrath West, Kilkenny (see attached map)

**Relevant Contract – Finance Bill 2022**

The land is currently leased for a period of 21 years commencing January 2021 to ██████████ for the trade of agriculture. “Trade” is defined in 2022 Finance Act section 101 as an activity, the profits of which, are taxed under Case I Schedule D – farming is such an activity.

The Finance Bill 2022 provides for the exclusion of land from the RZLT subject to a lease for the duration of the lease – Finance bill 2022 Section 98 – 653AHA – “Sites Subject to Relevant Contract.”

**Mixed Zoning**

Lands entered on the draft map prepared under paragraph 653C are selected according to the following criteria of Section 80 of the Finance Act 2021:

*653B. In this Part, a reference to land which satisfies the relevant criteria is a reference to land that—*

*(a) is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—*

*(i) solely or primarily for residential use, or*

***(ii) for a mixture of uses, including residential use,***

.....

***but which is not land—***

.....

***(ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,***

The meaning of the term “vacant & idle” was confirmed by the ruling of Judge Michael McGrath in the case of Allan J Navratil v An Bord Pleanala & Cork County Council [2020] IEHC292. That ruling stated clearly that land in use for farming activities could not be deemed “vacant or idle”.

As the land at Leggettsrath West is zoned for a mixture of uses - both General Business & Residential - the land falls into the provisions of 653B (a)(ii) and the current activity of farming trade deems it not to be “vacant or idle” under either the definition contained within the 2021 Act itself or the high court ruling.

### **Operation of a Trade on the Land**

The land is integral to the operation of a trade being carried out on the land.

#### ***Finance Act 2021 Section 80 653A:***

*‘vacant or idle land’ means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land;*

A “trade” is defined in the Finance Bill 2022 as:

*“trade” means a trade any profits or gains arising from which are chargeable to tax under Case I of Schedule D by virtue of section 18(2) of the Principal Act;*

This is reinforced by Revenue guidance:

#### ***Notes for Guidance - Taxes Consolidation Act 1997 Finance Act 2021 edition Part 23 Farming and Market Gardening***

***Farming is to be treated as the carrying on of a trade, or part of a trade, and farming profits are chargeable to tax under Case I of Schedule D. (1) Farming activities of a person, even though derived from different holdings or in different capacities (for example as sole owner of his/her own land and as a partner in other farming) are treated as a single trade.***

For this reason the land may not be included on the draft map and the authority is requested to remove the entry from the map as provided for in paragraph 653E.

### **Zoning**

The residential zoning on this land was never sought & the status of the title to the land prevents the development of housing by reason of financial and legal impediments.

The opinion of our legal representative, John O’ Leary at MJ O’Connor Solicitors is that the land could not be developed during the life of the current development plan due to the inability to transfer a registered title to the purchaser of a home or to satisfy the collateral requirements associated with raising the development finance for a development of that scale.

For this reason we request that the planning authority remove the residential zoning from the land. There are ample, as-yet un-zoned, lands in public ownership in the immediate locality that could replace the loss of this small parcel of land from the total area of residential zoned land in the city.

In 2021 the planning authority rezoned fully serviced lands in the city from residential to strategic reserve. This land does not feature on the draft map - despite the zoning description having wording that leaves these lands open for development should the need arise within the life of the plan and despite some of these lands having expired planning permissions. It is clear there are many alternative options open to the authority to activate land in Kilkenny City.

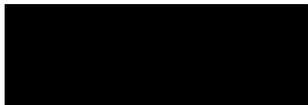
### **Conclusion**

The land at Leggettsrath West does not satisfy the criteria for inclusion on the map due to its mixed zonings & continued use integral to the carrying out of a trade, deeming it not vacant & idle.

The lease in place on the land prevents the collection of the RZLT according to the provisions coming into force under the Finance Bill 2022.

The planning authority is requested to unzone the residential land.

Yours faithfully,



# Kilkenny County Council Planning



12/12/2022, 11:14:07 AM

Zoning

- Amenity / Green links/Biodiversity conservation/ Open Space/Recreation
- Community Facilities

- Existing Residential
- General Business
- Industrial/Warehousing

1:1,830  
0 0.01 0.03 0.05 0.06 mi  
0 0.03 0.05 0.1 km  
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