



An
Bord
Pleanála

Inspector's Report ABP-316632-23.

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

Lands at Golden Island, Athlone, Co. Westmeath.

Local Authority

Westmeath County Council.

Local Authority Reg. Ref.

WM –C49-RZLT-10

Appellant

Diskens Retail Park Limited.

Inspector

Dáire McDevitt

1.0 Site Description

The appeal lands identified as WM-C49-RZLT-10 (Parcel ID WH000000080) are located at Golden Island, Carrick O'Brien Road in Athlone, Co. Westmeath. It is located to the east of Golden Island Shopping Centre and west of Central Autoparts Ltd. The northern part of the site has a carpark which is stated to serve the business to the east. The southern portion of the lands is greenfield.

2.0 Zoning

The site is not zoned in the current Westmeath County Development Plan 2021-2027. The site was formerly zoned 'Mixed Use-Athlone Town Centre' in the Athlone Town Development Plan 2014-2020, however with the adoption of the Westmeath County Development Plan 2021 which includes the administrative area of Athlone, the zoning under the former Town Development Plan is no longer applicable.

Section 10(8) of the Planning and Development Act 2000 states that 'There shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain zoned in any subsequent development plan'.

3.0 Planning History

PA Ref. 04/3040 (ABP Ref. PL.34.207457) refers to a grant of permission for 12 retail warehouses and associated services including car parking.

PA Ref. 06/3017 refers to a grant of permission for 4 retail units. (overlap with ABP PL.34.207457 site).

PA Ref. 07/3203 refers to modifications to 06/3017.

The planning authority noted that 07/3203 identified a temporary car park compound that was outside the red line boundaries and as such does not have the benefit of planning permission.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their lands removed from the draft map on the basis that a) part of the lands are the subject of significant flooding; b) part of the lands are in use as a car park and therefore should be excluded on the basis of a use that comprises transport facilities and infrastructure and c) there is a wayleave across a section of the lands in relation to a public sewer.

5.0 Determination by the Local Authority

The local authority determined that the land should be retained on the RZLT Draft Map as it was in scope and should remain on the map as 'the subject lands relate to Mixed Use zoned lands as set out under the Athlone Town Plan. It is the consideration of the Planning Authority that the lands satisfy the relevant criteria specified under section 653B(a) of the Taxes Consolidation Act 1997 (as amended by the Finance Act 2021), as the site in question are included in the Development Plan, in accordance with section 10(2)(a) of the Planning and Development Act 2000 (as amended), or a Local Area Plan, in accordance with section 19(2)(a) of the Act and are zoned solely or primarily for residential use or for a mixture of uses, including residential use. Furthermore, the subject mixed use zoned lands are considered 'vacant or idle' and the car park does not have the benefit of a permitted use and therefore is in scope with regard to the RZLT Final map.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- Site is prone to flooding. (Flood Zone A&B) with source of flooding fluvial. Commercial use at this location is less vulnerable to flooding.
- In use as a permitted carpark, therefore the northern portion of the lands is not vacant/idle as required for mixed use lands to fall within scope of RZLT.
- Wayleave for public sewer. (grassy area north of the car park)

The grounds of appeal include:

- A Flood Risk Assessment for the lands.
- Photographs of flooding in 2009 and 2013.

7.0 Assessment

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential.

The subject site is not zoned under either the Westmeath County Development Plan 2021-2027 or under a Local Area Plan. As such the site is not zoned and therefore should be removed from the RZLT map as it does not comply with section 653B(a).

I address the other matters raised in the Grounds of Appeal below, however, as set out above the subject site is not zoned for residential use and therefore cannot be considered in scope for the RZLT for that reason.

With respect to the use of lands as a car park. The planning authority in the Submission Assessment dated 27th March 2023 noted that 07/3203 identified a temporary car park compound that was outside the red line boundaries and as such did not have the benefit of planning permission and concluded that the site is vacant/idle and therefore within scope of RZLT.

Page 12 of Residential Zoned Land Tax- Guidelines for planning Authorities 2022 set out that temporary uses of land should not result in land being excluded from the tax measure. Notwithstanding, and as set out above, the site is not currently zoned under a Development Plan or Local Area Plan, and therefore is not in-scope for the RZLT.

With respect to the submission that the land is subject to flooding and not readily suitable for residential development on engineering grounds. I note that the grounds of appeal include a Flood Risk Assessment. The local authority in its assessment (dated 27th March 2023) noted that the site may have development potential

depending location, size and scale of flooding and should not be scoped out on the basis of flood mapping.

Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing including contamination and the presence of known archaeological or historic remains. The local authority are correct to point out that flood risk is not mentioned in this sub-section. However it is not excluded either, and the use of the word “including” would indicate that relevant matters of the site’s physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. However in this case the portion of the lands located in Flood Zone A and B are noted. The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) clearly set out that residential development on flood zone A is high probability of flooding and most types of development would be considered inappropriate for this zone and that development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Zone B - Moderate probability of flooding. The Guidelines set out that Highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met.

Therefore I conclude that it would not be reasonable to consider that those lands are not affected in terms of their physical condition to preclude the provision of housing. I am of the view that the location of the appeal lands on land identified as Zone A and B having regard to the guidance set out in the 2009 Guidelines referred to above that the lands identified as WM-C49-RZLT-10 (Parcel ID WH000000080) do not meet the criteria for inclusion under section 653B (c) . Notwithstanding, and as set

out above, the site is not currently zoned under a Development Plan or Local Area Plan, and therefore is not in-scope for the RZLT.

8.0 Recommendation

I recommend that the board set aside the determination of the local authority and remove the lands identified as WM-C49-RZLT-10(Parcel ID WH000000080) from the map.

9.0 Reasons and Considerations

Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B(a) of the Taxes Consolidation Act 1997, as amended, the lands identified as WM-C49-RZLT-10(Parcel ID WH000000080) are not zoned under a current Development Plan or Local Area Plan for the area, and as such cannot be considered in-scope for the RZLT.

I confirm that the report represents my profession 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.

Dáire McDevitt
Senior Planning Inspector
22nd June 2023