



An  
Bord  
Pleanála

## Inspector's Report ABP-316702-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map
<b>Location</b>	West City Retail Park, Innishmore, Ballincollig, Cork.
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	CRK-RZLT-79.2
<b>Appellant(s)</b>	Lidl Ireland GmbH
<b>Inspector</b>	John Duffy

## 1.0 Site Location and Description

- 1.1. The subject lands at West City Retail Park are located to the west of Ballincollig town centre, off Mechterstadt Road in the town. Located to the north and east of the site is the Innishmore residential estate, to the west is a commercial / industrial area, while to the south is a HSE facility and residential development and playground.
- 1.2. The site has recently undergone construction work associated with the redevelopment of the retail park under Reg. Ref. 21/40174. The western part of the lands accommodate a number of retail warehouse units including a discount supermarket and car parking. The north-eastern portion of the lands is undeveloped.
- 1.3. Background Note: The landownership extends across three adjoining sites identified by Land Parcel ID's CCLA00069441, CCLA00069442 and CCLA00069443 on the draft RZLT map. This file (ABP-316702-23 / PA Ref. CRK-RZLT-79.2) relates to CCLA00069442 only and the retail warehouse units on the land which have been excluded by the Local Authority from the RZLT map. Concurrent Appeal reference number ABP-316693-23 (PA. Ref. CRK-RZLT-79.1) relates to Land Parcel IDs CCLA00069441 and CCLA00069443. As the sites are adjacent, the appeal documents are identical. It should be noted however that the landowner has not appealed against the Local Authority's decision to exclude Land Parcel ID CCLA00069442 from the RZLT map.

## 2.0 Zoning and Other Provisions

- 2.1. The western part of the lands are zoned ZO08 – 'Neighbourhood and Local Centres,' while the north-eastern part of the lands are zoned ZO01 – 'Sustainable Residential Neighbourhoods in the Cork City Development Plan 2022 – 2028. Residential uses are permitted in principle in both ZO01 and ZO08 zoning objectives.

## 3.0 Planning History

- 3.1. Reg. Ref. 21/40174 – Permission granted for development (c 5081 sqm) comprising, inter alia, amalgamation / extension of retail units, sub-division of retail units, relocation of discount food store, change of use of unit to retail warehouse for sale of

bulky goods, development of new coffee shop building amendments to part of the existing surface car park area and internal vehicular circulation route.

- 3.2. Reg. Ref. 20/39470 – Permission granted for internal alterations to the Lidl food store to facilitate an increase in the net retail sales area of 147 sqm.

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

- 4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the draft map on the basis that lands denoted as Area A are currently restricted from any residential form of development other than for Industrial purposes in terms of a Restricted Use Covenant registered against the Leasehold Title. In terms of lands denoted as Area B, these lands are not zoned solely or primarily for residential use, or for a mixture of uses to include residential use and therefore do not meet the criteria for RZLT.

#### **5.0 Determination by the Local Authority**

- 5.1. The Local Authority determined that the lands were in scope for the following reasons:
- The land is included in the Cork City Development Plan 2022-2028, in accordance with Section 10(2)(a) of the Act of 2000 and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
  - These lands satisfy Section 653B(b) of the Act, in that it is reasonable to consider that the land may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage, and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.
  - Part of Parcel ID CCLA00069441 satisfies the criteria for inclusion in the map under section 653B(b) as it is considered serviceable.

Map slivers associated with Parcel ID CCLA00069441 will be removed from scope for inclusion in the map as they are considered as part of a trade which is authorised, pays rates, and serves the surrounding residential area pursuant to section 653B(c(i) of the Act.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following points are made in support of the appeal:

- Area A (Land Parcel ID CCLA00069441) is subject to a restricted 'Industrial' purposes use only covenant for Leasehold Ownership Interest Folio No. CK17483L which precludes residential development on the site. As such this land should be removed from the RZLT map.
- Area B (Land Parcel ID CCLA00069443) relates to the retail park itself, excluding the buildings thereon but does include its associated parking and service areas. The lands are zoned ZO08 'Neighbourhood and Local Centres' with the objective 'To protect, provide for or improve local facilities.' The lands are not vacant or idle. They form part of a trade/profession which is authorised, which is liable for commercial rates and provides services to adjoining residents (section 653B(c) (i) refers). These lands were identified as suitable for residential development in error. No other ZO08 lands have been identified as 'Residential' and included in the draft map in Cork city.
- Acknowledges the Local Authority's decision that Land Parcel ID CCLA00069442 which comprises retail warehouse buildings in Area B, are to be excluded from the draft map given that they are considered to be premises in which a trade/business is being carried out, which is liable to commercial rates and that it is reasonable to consider is being used to provide services to residents of adjacent areas.

## 6.2. Planning Authority Response

- No response on file.

## 7.0 Assessment

- 7.1. The comments raised in the appeal submission are noted. The sites identified for inclusion on the RZLT map are zoned for residential use, and for a mixture of uses, including for residential use and the Planning Authority determined that the sites remain on the RZLT map. The lands are in the built-up area of Ballincollig 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. In relation to the vacant lands (Area A as identified in the appeal submission) I note the appellant's contention that this land is subject to a covenant which precludes residential development. Section 3.2.3 of the RZLT Guidelines state that "*Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions.*" The issue raised relating to the covenant affecting the land is not included in the criteria for exclusion as set out under 653B of the Taxes Consolidation Act 1997, as amended. These lands are not subject to a statutory designation that may preclude development. Therefore, the lands at Area A are in scope for the RZLT. This ground of appeal should be dismissed.
- 7.3. Lands at Area B are occupied by a surface car park. While it is possible to develop dwellings on a car park, my opinion is that in this case the surface car park and service areas are serving the redeveloped retail park and is not vacant or idle. Exclusions from inclusion on the map under Section 653B (c) refer to lands '(iii) that it is reasonable to consider is required for, or is integral to, occupation by –
- (II) transport facilities and infrastructure
- The presence of the recently reconfigured car park serving the redeveloped Retail Park restricts the development potential of these lands.

## 8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the Local Authority in respect of Land Parcel ID CCLA00069441 and that the indicated site be retained on the map.
- 8.2. I also recommend that the board set aside the determination of the Local Authority in respect of Land Parcel ID CCLA00069443.

## 9.0 Reasons and Considerations

- 9.1. The appellant requested that Land Parcel ID CCLA00069441 be removed from the map having regard to a covenant pertaining to the lands that precludes residential development.
- 9.2. The lands are suitably zoned for residential development and no restrictions in terms of service provision have been identified by the Planning Authority. The site does satisfy the criteria for inclusion on the map set out in section 653B (c) of the Taxes Consolidation Act 1997, as amended.
- 9.3. The appellant requested that Land Parcel ID CCLA00069443 be removed from the map on the basis the lands are used to serve the retail park and they are not vacant or idle.
- 9.4. The lands are in use as a car park and service areas serving the retail park and are restricted for development under Section 653B(iii) (II) of the Taxes Consolidation Act 1997 as amended and should be omitted from the maps.

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.

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John Duffy  
Planning Inspector

18<sup>th</sup> September 2023

