



An
Bord
Pleanála

Inspector's Report ABP-316880-23

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	North of Courthouse Road, Fermoy, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT475122889
Appellant(s)	Tesco Ireland Limited
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The subject site is made up of land to the north of Courthouse Road (N72) to the east of Fermoy town centre. The site is a brownfield and vacant site.

2.0 Zoning and Other Provisions

2.1. The site is located on lands zoned Objective ZU 18-17 'Town Centre/Neighbourhood Centre under the Cork County Development Plan 2022-2028.

2.2. There are no protected structures, national monuments or any other item indicated on the development plan maps that directly impact on this site.

3.0 Planning History

3.1. Reg. Ref. 21/7462: Permission granted for a single-storey retail unit and 1 no. café/restaurant, and associated site works. This relates to portion of the site to the west and includes lands to the north.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have its lands removed from the draft map on the basis that:

- Lands should only be included on the map where residential use is permitted in principle. The zoning indicates that a dwelling may be appropriate but not a use clearly permitted in principle.
- The appellant has a current application for a commercial development on the site with no residential development included.
- The RZLT Guidelines for Planning Authorities seek to tax lands that are envisaged as including residential use and not penalise lands which clearly going to be developed for non-residential uses. As the zoning does not explicitly state residential is permitted in principle the lands should be scoped out.

- There is access issues with the appellant noting that the Local Authority require access to the lands (for the current application) from Mill Road and over lands to the north with no access considered off Courthouse Road.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the site was in scope and should remain on the map. The zoning allows for residential development in principle. Retail planning consent has been granted for a development and inclusion of the subject site can be reviewed on activation of retail development permitted.

6.0 The Appeal

6.1. Grounds of Appeal

- The zoning allows for residential development in principle. Retail planning consent has been granted and the site is clearly for the purposes of town centre expansion and retail use with a site specific objective FY-T-03. The Development Plan provides a list of appropriate uses for the zoning and such should be would be uses 'open for consideration'. The RZLT Guidelines for Planning Authorities state that residential development must be permitted in principle on mixed-use lands to be considered within scope for inclusion on the map.
- The site is within Flood Zone A with the proposed retail development subject to a justification text and considered a less vulnerable for of development. Under the Flood Risk Management Guidelines dwellings houses are considered highly vulnerable. In this regard the site does not qualify under Section 635(c) as it is affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.
- The proposed retail development on site is accessed is from Mill Road and incorporates lands to the north with access not considered from the Courthouse Road by the Local Authority.

- Residential developments have a greater infrastructural demand than retail developments with it not known if the subject site would have sufficient capacity available for a residential development in terms of the existing drainage system.

6.2 Response by Cork County Council

- The site is zoned for mixed use including residential use in compliance with section 635B(a)(ii).
- In relation to flooding the site is zoned for mixed use development and would be subject to a sequential test, justification test and Flood Risk Assessment, a proposed development should include mitigation measures and assessment of residual risk. The location of the site within a Flood Risk Zone does not preclude appropriate development of the lands.
- It has been demonstrated that appropriate access can be facilitated to the site (retail planning consent).

7.0 Assessment

7.1 The first issue raised is that the zoning is a mixed use zoning and residential is not indicated as being 'permitted in principle' under this zoning but appropriate, which the appellant interprets as being 'open for consideration' and not a 'permitted in principle' use. The RZLT Guidelines do state that in the case Operating Uses on Mixed Use Zoned Lands that "with reference to land that is included in a development plan or local area plan and is zoned for a mixture of uses, including residential such as TC-Town Centre, DC-District Centre, RE-Regeneration, LC-Local Centre and RV-Rural Village, all land should be excluded from the map unless is it considered 'vacant or idle'. 'For clarity, lands on mixed use zonings only fall into scope where residential development is a 'permitted in principle' use in that zoning".

7.2 Zoning policy under the Development Plan does not include a zoning matrix indicating permitted in principle uses, open for consideration use and not permitted uses. For each zoning category the objective for such is set out and then the 'Appropriate' uses.

In the case of the zoning for the site ZU 18-17: Town Centres/ Neighbourhood Centres the following objectives are noted...

“a) Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public. The primary retail areas will form the main focus and preferred location for new retail development, appropriate to the scale and function of each centre and in accordance with the Retail Strategy. Residential development will also be encouraged particularly in mixed use developments while the use of upper floors of retail and commercial premises in town centres for residential use will in particular be encouraged.

b) Recognise that where it is not possible to provide the form and scale of development that is required on a site within the core area, consideration can be given to sites on the edge of the core area based on sequential approach”.

The following are the ‘Appropriate’ uses identified for the zoning...“Retail, cultural uses, recreation uses, hotel, bed and breakfast, public houses, financial services, professional services, medical and healthcare services, leisure facilities, places of worship, residential, mixed residential, childcare facilities, education facilities, community facilities, civic uses, offices, public transport facilities, car parks, funeral homes”.

7.3 It is clear based on development plan policy that residential use is explicitly stated as a permitted use within this zoning objective and is on an equal standing in this regard with other uses including retail. This is clearly stated in the zoning objective and within the category of appropriate uses, which in my view is the equivalent of permitted in principle given it is the sole category provided in identifying permitted uses within the zoning. In this regard the lands in question are appropriately zoned for a mixture of uses, including residential use, and in compliance with Section 635B(a)(ii).

7.4 The appellant argues that the lands are subject to physical constraint due to being with Flood Zone A with residential development identified as highly vulnerable on such land under the Flood Risk Management Guidelines. The lands in question are located with Flood

Zone A based on CFRAM mapping and despite being within an area with flood defences. Residential development is indicated as being a highly vulnerable category of development under Table 3.1 of the Flood Risk Management Guidelines. I would be of the view that this classification would constitute physical constraint in the provision of residential development on these lands and would not meet the criteria under Section 635B(c) regarding whether it is reasonable to consider it 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 known archaeological or historic remains. In this regard I would recommend exclusion of these lands from the map on the basis that they do not meet the criteria under Section 635B(c) with a physical constraint due to classification of these lands within Flood Zone A in terms of fluvial flooding.

7.5 The appellants refer to concerns regarding the fact that residential developments have a greater infrastructural demand than retail developments with it not known if the subject site would have sufficient capacity available for a residential development in terms of the existing drainage system. The lands in question are located in an urban area on zoned lands and have been subject to a grant of permission for a retail development with it reasonable to conclude that the lands may have reasonable access to infrastructural services. There is no Uisce Eireann response on file, however an examination of their capacity register indicates that Fermoy WWTP is listed as being status Green with indication of available capacity.

7.6 The appellant argues that the site does not have reasonable access to road infrastructure noting that to facilitate development of the site (Reg. Ref. 21/7462) for a permitted retail development required inclusion of lands to the north to allow access off Mill Road with access from Courthouse Road not permitted. The criteria for inclusion on the map is that "it is reasonable to consider 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". In this case the lands in question have significant road frontage along Courthouse Road and there is an existing footpath along the road on the southern edge of the N72 where it adjoins the site. The lands also have some frontage off Mill Road to the north west and the appellants have been able facilitate access from Mill Road for a permitted development on the site. On this

basis it is reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including roads and footpaths and the site remains in scope for inclusion on the map.

8.0 Recommendation

8.1. I recommend that the board do not confirm the determination of the Local Authority and that the indicated site be excluded from the map.

9.0 Reasons and Considerations

9.1 The appellant requested that their site be removed from the map due to residential use not being permitted in principle within the zoning objective, lack of reasonable access to infrastructure in terms of road access and services, and physical constraint due to location within Flood Zone A. The site is appropriately zoned for a mixture of uses, including residential use, and in compliance with Section 635B(a)(ii). It is reasonable to consider that the site 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 in compliance with Section 635B(b). The site is located in Flood Zone A with residential use classified as being highly vulnerable development under the Planning System and Flood Risk Management-Guidelines for Planning Authorities (November 2009) with it not reasonable to conclude that the site is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings and would not comply with Section 635B(c).

9.2 The subject lands do not satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

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.

Colin McBride
Senior Planning Inspector

01st September 2023