



An
Bord
Pleanála

Inspector's Report ABP-320367-24

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 Map

Location

Lands at Green Road, Carlow

Planning Authority

Carlow County Council

Planning Authority Reg. Ref.

CLW-C95-1

Appellant(s)

South East Technological University
Carlow

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The appeal lands comprise two adjoining land parcels. The land parcel fronting onto Green Road in Carlow town, approximately 0.58 hectares in area and identified as Parcel ID CWLACW71, accommodates a residential property. The directly adjoining parcel to the east, approximately 2 hectares in area and identified as Parcel ID CWLACW55, is used for agricultural purposes.

2.0 Zoning and Other Provisions

- 2.1. The operative Development Plan is the Carlow Development Plan 2022 – 2028.
- 2.2. Carlow Town is designated a Key Town within the region and as a regional and inter-regional economic growth driver. Carlow Town is a regional centre for education, healthcare, public services, shopping and arts, culture, leisure and recreation for a wide area. It is also a dynamic base for education, learning and development with two Institutions of Higher Education, the Institute of Technology Carlow and Carlow College, St. Patricks.
- 2.3. Land Parcel ID CWLACW71 fronting onto Green Road is zoned as 'Existing / Infill Residential' in the Carlow Development Plan 2022 – 2028.
- 2.4. Land Parcel ID CWLACW55 to the east is zoned as 'New Residential' in the Development Plan.
- 2.5. Laois and Carlow County Councils have commenced the preparation of the Carlow-Graiguecullen Joint Urban Local Area Plan. In this regard the Draft Carlow-Graiguecullen Joint Urban Local Area Plan 2024-2030 (Draft JULAP) is in place.

3.0 Planning History

Land Parcel ID CWLACW55

Planning Authority Reference 18/146 refers to a June 2018 decision to refuse permission to extend the duration of Planning Authority Reference 13/6553 which permitted a residential development of 65 units.

An Bord Pleanála Reference PL01.244248 / Planning Authority Reference 14/6619 refers to an April 2015 decision to refuse permission for a temporary car park (168 spaces) and associated works.

Planning Authority Reference 13/6553 refers to a June 2013 decision to grant the extension of duration of Planning Authority Reference 07/5905 / ABP Reference PL.42.226948 which related to a residential of 65 units.

An Bord Pleanála Reference PL42.226948 / Planning Authority Reference 07/5905 refers to a May 2008 decision to grant permission for a residential of 65 units.

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 Final Map on the basis that the lands are included within the University's current Development Masterplan and Strategic Plan to facilitate the expansion of the educational provision and to maximise educational opportunities. The submission considers that the lands are outside the scope of the RZLT given that one land parcel accommodates a residential property and its associated garden, while the second land parcel is used for agricultural purposes.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the lands are in scope, given their residential zoning, that it is reasonable to consider they may have access to or be connected to public infrastructure and facilities necessary for dwellings to be developed and also that they are not affected in terms of their physical condition to a sufficient extent to

preclude the provision of dwellings. The determination also states that that the lands 'are not considered required for, or integral to, the provision of education and therefore do not satisfy the exemption criteria specified in section 653B(c)(iii)(I) of the Finance Act 2021, as inserted in Part 22A of the Taxes Consolidation Act 1997 (as amended).'

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- An exemption was applied for on the basis that the lands are required for educational purposes, specifically the delivery of student accommodation.
- Requests that the lands are removed from scope having regard to the difficulties encountered in bringing the lands forward for student accommodation.
- The University made a submission in respect of the Draft Carlow-Graiguecullen Joint Urban Local Area Plan requesting that student accommodation use be included in the 'permitted in principle' categories of the following zoning objectives: New Residential, Existing / Infill Residential and Community / Education. Subsequently, the Material Alterations to the Draft LAP included 'purpose built and managed student accommodation' within the Community / Education zoning objective.
- A feasibility study was undertaken in 2022 for purpose built student accommodation with the subject lands identified as a prime location.
- The University are presently in active discussions with the Department of Further and Higher Education and the Higher Education Authority regarding delivery of student accommodation on the lands. A funding application for student housing on the lands has been submitted to these bodies.
- The lands are included in both the University's Development Management Plan and Strategic Plan.

- The Draft LAP aims to facilitate student accommodation at suitable locations convenient to colleges and it is supportive of such development to enhance the offerings of the University.
- To include the subject lands in the scope of RZLT would impede the potential development of the lands.
- Land Parcel ID CWLACW71 does not meet the criteria for inclusion as set out in section 653(b). It is currently not serviced, not having access to public infrastructure including roads, lighting and water supply. Appendix 3 provides a feasibility report prepared by the University's consulting engineers.
- Land Parcel CWLACW55 accommodates one house, acquired in 2023 and provides student accommodation from September 2024. As such this property is used for both educational and residential purposes satisfying the exemption under section 653B(c)(iii)(I)
- This Land Parcel should be exempted from the tax given it comprises a residential property liable to the Local Property Tax (LPT). It is acknowledged that as the property has a garden greater than 0.407 ha, it will be included on the RZLT map.
- It must be acknowledged that purpose built student accommodation is a social, community and educational facility. The subject lands are integral to provision of education. Delivery of such accommodation is a core part of the University's remit.

The appeal includes the following Appendices:

- Appendix 1: Copy of original submission made to Local Authority
- Appendix 2: Copy of Local Authority's Notice of Determination
- Appendix 3: Feasibility Study
- Appendix 4: Copy of Local Property Tax Payment (Not included)

7.0 Assessment

- 7.1. 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 appeal lands comprise two adjoining land parcels. As set out above, Land Parcel ID CWLACW71 fronting onto Green Road is zoned as 'Existing / Infill Residential' while Land Parcel ID CWLACW55 adjoining to the east is zoned as 'New Residential' in the Carlow Development Plan 2022-2028. As such, both parcels can be considered in scope for the RZLT.
- 7.2. The appellant contends that the appeal lands should be excluded from the scope of the RZLT as they are required by the University for educational purposes, specifically for the development of purpose built student accommodation. The residential property on Land Parcel ID CWLACW71 is stated to have been acquired by the University in 2023 with the intention of using it for student accommodation from September 2024. In this context the appellant contends that the exemption set out under section 653B(c)(iii)(l) relating to social and community infrastructure and facilities, including infrastructure and facilities used for the provision of education, applies to the lands.
- 7.3. Page 11 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022 states 'where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I)-(IV) by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the lands area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out.' In this instance the lands are zoned 'Existing / Infill Residential' and 'New Residential' as detailed above where residential use is permissible. I note that the Carlow Development Plan 2022-2028 has not specifically identified the subject lands for educational use and as such, in accordance with the Guidelines, I consider that both land parcels are in scope and they do not meet the provision of section 653B(c) for exclusion from the map.

- 7.4. The appellant considers that Land Parcel ID CWLACW71 does not meet the inclusion criteria set out in section 653B on the basis it is not serviced by public infrastructure including by roads, lighting and water supply.
- 7.5. The Local Authority sought comments from Uisce Éireann (UÉ) in relation to water and wastewater infrastructure in the vicinity of the appeal lands. Given that the land parcels are located directly adjacent to each other UÉ assessed them as one overall site, noting that a water main is accessible 5 m from the lands on Green Road, with a second water main 10 m from the entrance. UÉ has confirmed that a sewer exists on the public road.
- 7.6. The Local Authority undertook an assessment of whether the land is connected or able to be connected to services and in this regard considered that the lands are in scope. The appeal lands have access onto existing road infrastructure or access could be provided and they are serviced in terms of footpaths and public lighting. I am of the view that the site can be served in principle by the existing road network that is in place and is on zoned lands where residential development is a permissible use. As with all development, the applicant/developer will be expected to provide for any internal road network necessary to serve the lands and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the Local Authority and assessed on its merits through the development management process. I consider that is reasonable to consider that the lands either have access or may have access to public roads and this ground of appeal should be dismissed.
- 7.7. The appellant claims that the land parcel accommodating the residential property which is to be used for student accommodation adjoining Green Road should be exempt from RZLT as it is liable to the LPT. While the appellant states in the appeal that a copy of the most recent LPT payment for the property is included, I note that it has not been provided, as stated, at Appendix 4.
- 7.8. If the site is situated in the curtilage of a residential property, the RZLT Guidance states on page 8 that:

Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of

residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation).

7.9. If the appeal site forms part of the curtilage of a residential property, it is not considered a 'site' for the purposes of the RZLT, however this does not mean that the lands are removed from the map and no action is required of the Planning Authority. The landowner (appellant) must provide information to the Revenue Commissioners, to demonstrate that the tax will not be payable. The issue of liability under the Tax Code is a matter for the Revenue Commissioners and is not a consideration under this process.

7.10 The remaining grounds of appeal do not come within the parameters of section 653B. As such they are outside the remit of this process and should be dismissed. In this regard section 3.2.3 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) 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."*

8.0 Recommendation

8.1. Having regard to the foregoing, I consider that the lands identified as Parcel ID CWLACW71 and Parcel ID CWLACW55 on the RZLT Final Map meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion of the subject lands from the final map.

9.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (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.

The lands identified as Parcel ID CWLACW71 and Parcel ID CWLACW55 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area. No capacity or other reasons have been identified that would

prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Carlow County Council

Local Authority Reference Number: CLW-C95-1

Appeal by South East Technological University Carlow in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Carlow County Council on the 14th day of June 2024 in respect of the site described below.

Lands at: Green Road, Carlow

Decision

The Board 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 Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID CWLACW71 and Parcel ID CWLACW55 on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (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.

The lands identified as Parcel ID CWLACW71 and Parcel ID CWLACW55 are zoned 'Existing / Infill Residential' and 'New Residential' respectively, and are considered to be in scope of section 653B(a). The lands are located within an established urban area. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

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.

John Duffy
Planning Inspector

4th September 2024