



An
Bord
Pleanála

Inspector's Report ABP-320411-24

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

On lands at Dublin Road, Kilkenny.

Local Authority

Kilkenny County Council

Planning Authority Reg. Ref.

KK-C247-7

Appellant

Peter Cunningham

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as lands at Dublin Road, Kilkenny are located on the northern side of Dublin Road, at the east side of the junction between Castlecomer New Road and Dublin Road. I note that no Parcel ID is attributed to the site. The southern portion of the site is in use as a surface level car park. The northern portion of the site contains a stone built structure and earthen embankment and is currently fenced off from the rest of the site. To the north the site immediately adjoins a disused section of the Kilkenny (Mac Donagh) train station and to the northeast is the train station and its ancillary car park. To the immediate west is a small area of public open space. To the south, on the opposite side of Dublin Road, is the Church of St. John the Evangelist.

2.0 Zoning and Other Provisions

The relevant plan is the Kilkenny City and County Development Plan 2021-2027, which came into effect on 15 October 2021.

- The site is zoned General Business - To provide for general development under Figure CS4 Kilkenny City Zoning of the Plan.
- Dwellings are listed as Permitted Uses, under Section 2.9.5 of the Plan.
- To the north of the site, is a linear designation for Cycle Lane/Pedestrian Improvement under Z6. Section 2.9.17 City Zoning Map Objectives lists the following under Z6: To promote a pedestrian/cycling connectivity between the railway station and the mixed-use centre and to promote connectivity between these uses and the city centre along the former railway line and St. Francis bridge.
- The John Street ACA is located to the south of the subject site, on the opposite side of the Dublin Road.

3.0 Planning History

There is an extension planning history at the subject site. Below is a summary of the recent and relevant planning applications:

PA Ref. 03990032, ABP Ref. PL62.207285: On the 25 November 2004, ABP granted a modified planning permission for a mixed-use scheme including retail, residential,

office, hotel/restaurants/bars, childcare facilities and ancillary plant. The subject site accommodates Building No. 6 under this permission. This permission was extended under PA Ref.09/990069 up to 14th December 2014 and again under PA Ref. 14508 up to 14 November 2019.

PA Ref. 0899005656: On the 24 June 2008 temporary retention permission was granted to Chesterbridge Developments Ltd. for the use of the subject site as a surface level car park. This permission was for a period of 3 years and expired on the 24 July 2011.

PA Ref.11990058: On the 23 February 2012 temporary retention permission was granted to Macdonagh Junction Developments Ltd. for the use of the subject site as a surface level car park. This permission expired on 22 February 2017

PA Ref. 18762: On the 22 February 2019 temporary retention planning permission was granted to Iarnrod Éireann for the use of the site as a 45 no. space car park. This permission was for a period of 2 years and expired 21 February 2021.

PA Ref. 2360079, ABP Ref. 319389-24: On the 03 March 2023 a planning application was lodged by Spark Way Limited for the construction of a hotel at the subject site. The decision of the PA to grant planning permission for the scheme was appealed to An Bord Pleanála. A decision on this case has yet to be made.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis the site was the subject of an ongoing planning application.

5.0 Determination by the Local Authority

The local authority (LA) determination relates to 2 no. parcels of land comprising:

- The subject site comprising a surface level car park, as mapped in the submission by CIÉ/Iarnód Éireann.
- A linear strip of land to the north at MacDonagh Junction that did not form part of the CIÉ/Iarnód Éireann submission.

The relevant section of the LA determination to the subject site states the following:

By Order dated 25/06/2024 it was determined to include the above land on the final map of the Residential Zoned Land Tax for the following reasons:

- This land is zoned as General Business in the Kilkenny City and County Development Plan, 2021, and
- The site constitutes land satisfying the relevant criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended, for inclusion in the map.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The lands are in use as a car park, which is integral to the operation of the adjoining shopping centre and railway station.
- Planning permission for the car park has expired but the car park remains inherent to the businesses in the vicinity, which are subject to commercial rates.
- The railway station is a transportation use and therefore the ancillary car park is excluded from scope under Section 653B of the Act.
- The lands are not vacant or idle.
- The lands are not zoned for residential development.
- The site was never intended for residential use, and the LA have pursued a commercial hotel use at the site.

7.0 Assessment

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the Act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2

that:

“in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only”.

The appeal relates only to the area under the control of CIÉ/Iarnód Éireann, as per the map submitted with the Appeal Statement. This assessment is limited to those lands.

The Grounds of Appeal state that the site is not zoned for residential use. The LA assessment concludes that the site is zoned General Business and is considered mixed-use for the purposes of their assessment.

Section 2.9.5 of the Kilkenny City and County Development Plan 2021-2027 (the Plan) lists Dwellings as a Permitted Use on lands zoned General Business. Page 12 of the RZLT Guidelines outlines that *“...lands on mixed use zonings only fall into scope where residential development is a ‘permitted in principle’ use in that zoning”*. Drawing from the above, I consider that the subject site is zoned for mixed use development including residential and meets the criteria for inclusion in the RZLT map under Section 653B(a)(ii).

It is submitted that the site should be excluded from the map on the basis that the lands are in active use as a car park to serve the railway station and the existing businesses in the vicinity. The LA in their assessment notes that the existing car park is unauthorised and, therefore, does not meet the criteria for exclusion from the map.

The definition for Vacant or Idle is provided in Section 653A of the Taxes Consolidation Act 1997, as amended. Under this definition, vacant or idle land comprises development that is not unauthorised development and is not required for or integral to the operation of a trade or profession being carried out adjacent to the land. With reference to this definition, I note that the existing car park at the site does not have the benefit of planning permission. The most recent permission at the site, that provided for the temporary retention of the car park, expired 21 February 2021. It is my opinion that the existing car park is not directly integral to the operation of any adjoining trade or profession, on the basis that this area is open for any customers

and is not specifically dedicated to any business or profession on the adjoining lands. In this way, subject lands do not fall within the definition of Vacant or Idle and, therefore, do not meet the criteria for exclusion under Section 653B(ii) of the Act.

The Appellant states that the site should be excluded from the RZLT map on the basis that the existing car park is integral for the operation of the railway station, which is transportation infrastructure.

I note that there is an existing car park to the east of the site that serves the railway station. On the basis that this designated railway car park has accessible spaces, bus spaces and e-charging points, I consider that this car park is sufficient to meet the operational requirements of the railway station. The car park at the subject site is not specifically dedicated to the railway station and can be used by all members of the public, notwithstanding its purported use for overflow railway station parking. Drawing from the above, I do not consider that the car park at the subject site is required for, or integral to, the operation of the Kilkenny (MacDonagh) train station. In this way, subject lands do not meet the criteria for exclusion under Section 653B(iii)(II) of the Act and the grounds of appeal should be dismissed.

The site is accessed from the Dublin Road, and there are existing public footpaths and lighting serving the site and adjoining lands. The Uisce Eireann (UE) waste water capacity register published June 2023 (accessed 6 September 2024) indicates that there is capacity available in the Kilkenny City and Environs WWTP. The UE 10-year Water Supply Capacity Register Published June 2023 (accessed 6 September 2024) indicates that there is capacity available in the Kilkenny City Water Resource Zone with level of service improvement required. These works would not preclude development or inclusion of the site on the RZLT map with reference to page 8 of the RZLT Guidelines. In this way, it is reasonable to consider that the site can connect to public services and infrastructure as per Section 653B(b) of the Act.

The northern portion of the site contains a derelict structure/enclosure located on an earthen embankment. This structure is not included on the Record of Protected Structures and is not on the Sites and Monuments Record or the National Inventory of Architectural Heritage. Permission granted for a hotel at the site under Reg. Ref. 03990032 included site clearance works. Therefore, the site is not excluded under Section 653B(c) as the physical condition of the site does not preclude the provision

of dwellings.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as lands at Dublin Road, Kilkenny, which are under the control of CIÉ/Iarnód Éireann and are mapped in the Appeal Statement, meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under 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

The lands identified as lands at Dublin Road, Kilkenny, as shown in the map included with the Appeal Statement, are zoned General Business including residential development and are considered in scope of section 653B(a). The existing car park on the site does not have the benefit of planning permission and, therefore, does not accord with the definition of ‘vacant or idle’ and does not meet the criteria for exclusion from the RZLT map under Section 653B (ii) of the Act. On the basis that there is a designated railway station car park that has sufficient facilities, the car park at the subject site is not required for, or integral for the operation of Kilkenny (MacDonagh) railway station and, therefore, does not meet the criteria for exclusion from the RZLT map under Section 653B (iii)(II) of the Act. The site is served by existing adjoining roads, footpaths and public lighting. Evidence from the UE capacity register confirms that services are available and that there is sufficient capacity to serve the lands. No other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Kilkenny County Council

Local Authority Reference Number: KK-C247-7

Appeal by Mary Murphy 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 Kilkenny County Council on the 26 day of June 2024 in respect of the site described below.

Lands at: On lands at Dublin Road, Kilkenny.

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 lands at Dublin Road, Kilkenny, as shown in the Appeal Statement, on the final map.

Reasons and Considerations

The lands identified as lands at Dublin Road, Kilkenny, as shown in the map included with the Appeal Statement, are zoned General Business including residential development and are considered in scope of section 653B(a). The existing car park on the site does not have the benefit of planning permission and, therefore, does not accord with the definition of 'vacant or idle' and does not meet the criteria for exclusion from the RZLT map under Section 653B (ii) of the Act. On the basis that there is a designated railway station car park that has sufficient facilities, the car park at the subject site is not required for, or integral for the operation of Kilkenny (MacDonagh) railway station and, therefore, does not meet the criteria for exclusion from the RZLT map under Section 653B (iii)(II) of the Act. The site is served by existing adjoining roads, footpaths and public lighting. Evidence from the UE capacity register confirms that services are available and that there is sufficient capacity to serve the lands. No other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use objective that applies to these lands.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Sinead O'Connor

Planning Inspector

Date: 10 September 2024