



An
Bord
Pleanála

Inspector's Report ABP-320426-24

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

Crumlin Shopping Centre and Crumlin Swimming Pool, Crumlin Road, Dublin 12

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000242

Appellant(s)

Better Value Unlimited Company

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject brownfield lands accommodate the Crumlin Swimming Pool and the majority of the Crumlin Shopping Centre building located on the northern side of the Crumlin Road. The site on the RZLT map (Land Parcel ID DCC000064153 refers) excludes the surface car park to the north and west of the shopping centre and the Dunnes Stores supermarket operating from the northern part of the shopping centre building.

2.0 Zoning and Other Provisions

- 2.1. The subject site is zoned Z4 – ‘Key Urban Villages and Urban Villages’ in the Dublin City Development Plan 2022-2028. This zoning objective seeks ‘To provide for and improve mixed-services facilities.’ Crumlin Shopping Centre is designated as ‘KUV 9’ in the Development Plan. The subject lands are zoned for a mixture of uses, with residential use permissible in the Z4 land-use zoning objective.

3.0 Planning History

3.1. RZLT Appeal

An Bord Pleanála Ref. ABP-317947 / Planning Authority Ref. RZLT-000167 refers to an October 2023 decision to include the subject lands on the RZLT map given that they meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The supplemental map as published had excluded the surface car park to the north and west of the shopping centre and the anchor supermarket operating from the northern part of the shopping centre building.

3.2. Other relevant planning history

Planning Authority Ref. 3372/23 refers to an April 2024 decision to grant permission for demolition of existing buildings, construction of shopping centre, café, library and gym facility.

An Bord Pleanála Ref. PL29S.235004 / Planning Authority Ref.3078/09 refers to a February 2010 decision to grant permission for the demolition and development of

substantial part of existing shopping centre. An extension of duration of this permission was granted up to 17th March 2020.

Planning Authority Ref. 3093/09 refers to a September 2009 permission granted for the demolition of Crumlin Leisure centre buildings and the construction of a two storey mixed use building to contain an off-licence, hot-food take away outlet and 2 no. retail units and health club/gymnasium at first floor level. An extension of duration of this permission was granted up to 5th December 2017.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have the lands removed from the RZLT map on the following grounds:

- The landholding should not be split up in an arbitrary manner for the purposes of considering RZLT.
- There is no requirement for residential development to occur on the lands according to the Core Strategy.
- The lands are neither vacant nor idle.
- The site's car park, service yard and service access are integral to the operation of the premises.
- RZLT is an unwarranted tax burden on the appellant.

5.0 Determination by the Local Authority

5.1. The Local Authority issued a split determination (i.e. Part 1 and Part 2). It determined under Part 1 that lands comprising the footprint of the Crumlin Shopping Centre building as shown on the RZLT map and Crumlin Swimming Pool including its ancillary lands as outlined in blue and red from the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02, as part of Planning Application Ref. 3372/23, are in scope for the following reasons:

- Are zoned for a mixture of uses, including residential use.

- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as evidenced by their city location and planning permissions on the land.
- Are vacant / idle, as there is currently no active permitted use on the lands and there hasn't been for a number of years and the lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to the land.
- Meet the other qualifying criteria of Section 653B of the Taxes Consolidation Act as amended.

5.2. The Local Authority also determined under Part 2 that the lands comprising the Deposit Return Point, service road, service yard and parts of the existing surface car park on the lands at Crumlin Shopping Centre and Crumlin Swimming Pool are not in scope and should be excluded from the RZLT map on the basis that the lands do not satisfy Section 653B of the Taxes Consolidation Act 1997, as amended, as the lands are zoned for a mixture of uses, including residential use but are required for, or integral to, the operation of a trade or profession being carried out on or adjacent to the land.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- The lands are not vacant or idle; the shopping centre functions and operates with staff, customers and deliveries being made. Key site components comprise the Dunnes Stores anchor unit, the entire car park and the service road and yard which are all in active use. Therefore there is no rational basis to seek to apply RZLT on the lands.
- The RZLT MAP shows all of the car park excluded from the map. The Council's decision refers to 'parts of the existing surface car park' to be excluded which is presumed to be an error.

- There is no map identifying the lands the exclusion set out in the Council's determination refers to, or the extent of such lands.
- The landholding should not be arbitrarily split up for the purposes of considering RZLT. There is no requirement for residential development to occur on the lands according to the core strategy and as such there is no rational basis in seeking to apply RZLT on the lands. The granting of planning permission for the redevelopment of the lands without any residential component supports this position.
- The Local Authority report noted that the lands are not subject to phasing in the Development Plan core strategy, however this fails to acknowledge that the core strategy does not provide for any residential units on the lands.
- The site's designation as a Key Urban Village supports a phased and strategic approach to its development, prioritising urban renewal over immediate residential use.

The appeal includes the following attachments:

- Determination by Local Authority.
- Evaluation Report by Local Authority.
- Details of Planning Authority Reg. Ref. 3372/23.

7.0 **Assessment**

- 7.1. 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.”

- 7.2. The site identified for inclusion on the RZLT map is included in the Dublin City Development Plan 2022-2028 and is zoned for a mixture of uses, including residential use as required by section 653B of the Taxes Consolidation Act 1997, as amended. The brownfield site is within an urban area with services available and no capacity issues have been identified that would prevent the development of these lands for residential purposes.
- 7.3. The appellant contends that the lands are not vacant or idle and that the landholding should not be split up for the purposes of RZLT. Page 12 of the RZLT Guidelines set out that ‘vacant or idle land’ means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land. It is the case that a sizable part of the site is vacant or idle and I consider it entirely appropriate to assess the lands for RZLT on this basis. The shopping centre (with the exception of the anchor store and the area accommodating the Deposit Return Point) is vacant or idle and has been for some years, as are the adjoining lands comprising Crumlin Leisure Centre including ancillary lands outlined in the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02 submitted with the most recent planning application relating to the lands (PA Reg. Ref. 3372/23). As such I consider that the site cannot avail of the exclusion as set out under section 653B (c) (ii) of the Taxes Consolidation Act 1997 as amended.

In my view the Local Authority acted appropriately when excluding the anchor store, the area accommodating the Deposit Return Point and both the service road and service yard from the RZLT map on the basis that these lands are required for, and are integral to the operation of a trade or profession being carried out on or adjacent to the land. While I note the reference in the determination to exclude ‘parts of the existing surface car park’ from RZLT, all parts of the car park serving the

supermarket were excluded from RZLT in 2023 and this should continue to be the case as there have been no material changes in the interim period in that the car park is, in my opinion, also integral to the operation of a trade or profession being carried out on or adjacent to the land. This is reflected on the RZLT map.

- 7.4 Section 3.2.3 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) states the following:

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.

Section 3.3.2 of the Guidelines also confirms that An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only.

The appeal refers to the absence of any requirement for residential development on the subject lands and the recent planning permission achieved without any residential component. Such matters fall outside of the qualifying criteria in section 653B; as such they cannot be considered in the appeal process.

8.0 Recommendation

Having regard to the foregoing, I recommend that the Board confirm the determination of the local authority in part and set aside the determination of the local authority in part, as follows:

Part A

- (i) Set aside the local authority determination in part and exclude all parts of the existing surface car park serving the supermarket, located outside Parcel ID DCC000064153, from the final RZLT map.

Part B

- (i) Confirm the local authority determination and include the following lands on the final RZLT map:

Lands comprising the footprint of the Crumlin Shopping Centre building as shown on the RZLT map and Crumlin Swimming Pool including its ancillary lands as outlined in

blue and red from the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02, as part of Planning Application Ref. 3372/23.

(ii) Confirm the local authority determination and exclude the following lands on the final RZLT map:

Lands comprising the Deposit Return Point, service road, and service yard at Crumlin Shopping Centre and Crumlin Swimming Pool.

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 within Parcel ID DCC000064153 as shown on the RZLT Final Map comprising the footprint of the Crumlin Shopping Centre building and Crumlin Swimming Pool and its ancillary lands as outlined in blue and red on the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02 as part of Planning Application Ref. 3372/23, all zoned Z4 – ‘Key Urban Villages and Urban Villages,’ are considered to be within 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 Z4 – ‘Key Urban Villages and Urban Villages’ zoning objective that applies to these lands. These lands are vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land. As such, the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended.

The lands comprising the Deposit Return Point, the service road and the service yard on the lands at the Crumlin Shopping Centre and Crumlin Swimming Pool zoned Z4 – ‘Key Urban Villages and Urban Villages,’ are considered to be outside the scope of Section 653B(a) as the lands are zoned for a mixture of uses, including residential use but are required for, or integral to, the operation of a trade or profession being carried out on or adjacent to the land. All parts of the existing

surface car park associated with the supermarket and located outside Parcel ID DCC000064153 are also considered outside the scope of RZLT for the above-mentioned reasons.

10.0 **Recommended Draft Board Order**

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000242

Appeal by Better Value Unlimited Company 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 Dublin City Council on the 27th day of June 2024 in respect of the site described below.

Lands at: Crumlin Shopping Centre and Crumlin Swimming Pool, Crumlin Road, Dublin 12

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 in part and set aside the determination of the local authority in part, as follows:

Part A

(i) Set aside the local authority determination in part and exclude all parts of the existing surface car park serving the supermarket, located outside Parcel ID DCC000064153, from the final RZLT map.

Part B

(i) Confirm the local authority determination and include the following lands as shown on the final RZLT map:

Lands comprising the footprint of the Crumlin Shopping Centre building as shown on the RZLT map and Crumlin Swimming Pool including its ancillary lands as outlined in

blue and red from the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02, as part of Planning Application Ref. 3372/23.

(ii) Confirm the local authority determination and exclude the following lands on the final RZLT map:

Lands comprising the Deposit Return Point, service road, and service yard at Crumlin Shopping Centre and Crumlin Swimming Pool.

Reasons and Considerations

The lands identified within Parcel ID DCC000064153 as shown on the RZLT Final Map comprising the footprint of the Crumlin Shopping Centre building and Crumlin Swimming Pool and its ancillary lands as outlined in blue and red on the excerpt of Drawing No. DSC-ALT-XX-00-DR-A-PL02 as part of Planning Application Ref. 3372/23, all zoned Z4 – ‘Key Urban Villages and Urban Villages,’ are considered to be within 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 Z4 – ‘Key Urban Villages and Urban Villages’ zoning objective that applies to these lands. These lands are vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land. As such, the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended.

The lands comprising the Deposit Return Point, the service road and the service yard on the lands at the Crumlin Shopping Centre and Crumlin Swimming Pool zoned Z4 – ‘Key Urban Villages and Urban Villages,’ are considered to be outside the scope of Section 653B(a) as the lands are zoned for a mixture of uses, including residential use but are required for, or integral to, the operation of a trade or profession being carried out on or adjacent to the land. All parts of the existing surface car park associated with the supermarket and located outside Parcel ID DCC000064153 are also outside the scope of RZLT for the above-mentioned reasons.

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

7th October 2024