



An  
Bord  
Pleanála

## Inspector's Report ABP-320434-24

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### 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

Former Nissan Site, Naas Road, Dublin 12

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

RZLT-000236

### Appellant(s)

O'Flynn Construction Co. Unlimited Company

### Inspector

John Duffy

## **1.0 Site Location and Description**

- 1.1. The brownfield lands (approximately 0.831 hectares) comprise part of the former Nissan site located to the south of the Naas Road and to the east of Walkinstown Avenue in Dublin 12. This site which is part of a larger landholding contains a former car showroom / office / warehouse building and car parking areas. The warehouse part of the building is currently being used for storage. There is vehicular access to the subject lands from the R112 to the east.
- 1.2. The lands comprise Land Parcel ID DCC000064293 on the final RZLT map.
- 1.3. There is a concurrent RZLT appeal (An Bord Pleanála Reference ABP-320436-24) on adjoining lands to the north and east.

## **2.0 Zoning and Other Provisions**

- 2.1. The subject lands are within Zone Z14 – ‘Strategic Development and Regeneration Areas’ (SDRA) in the Dublin City Development Plan 2022-2028 (Zoning map G refers). This zoning objective seeks ‘To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use.’ The lands are zoned for a mixture of uses including residential use.
- 2.2. The lands form part of SDRA 5 – Naas Road in the Dublin City Development Plan 2022-2028 (Section 13.7 of the City Development Plan refers). The subject lands are identified therein as a Key Opportunity Site for mixed use development.

## **3.0 Planning History**

### RZLT Appeal on adjoining site to the north and east

An Bord Pleanála Ref. ABP-316975-23 / Planning Authority Ref. RZLT000055 refers to an August 2023 decision to confirm the determination of the local authority to include lands at the former Nissan Site, Naas Road, Dublin on the RZLT MAP. This decision was the subject of Judicial Review proceedings which were struck out by

the High Court on the basis that, inter alia, a deferral in the liability to tax for a one year period rendered the proceedings moot.

### Other

The overall landholding has an extensive planning history. Relevant applications are as follows:

Planning Authority Ref. 3228/20 refers to an April 2021 decision to grant a 10-year permission for a mixed-use development including part Build to Rent scheme in 13 no. blocks (Blocks A-L) ranging in height from 4 - 15 storeys over 3 no. basements with a cumulative gross floor area of 168,184.13 sqm. The application area includes part of the 'Nissan Site' (6.429 hectares) and 0.492 hectares to accommodate works to facilitate connections to municipal services and works proposed to public roads.

Planning Authority Ref. 3060/23 refers to a February 2021 decision to grant permission for modifications to the previous application under 3228/20.

Planning Authority Ref. 2799/12 refers to an August 2012 decision to grant permission to erect a glazed lean-to walkway between two existing showrooms.

Planning Authority Ref. 3569/09 refers to a September 2009 decision to grant permission for change of use of vacant showroom and workshops to recreation use, modifications to building incorporating new roller skating rink, café, offices, children's fitness centre.

Planning Authority Ref. 3677/05 refers to an August 2005 decision to grant permission for a single storey warehouse adjacent to the parts warehouse.

Planning Authority Ref. 1626/99 refers to a July 1999 decision to grant permission for a motor (trade display) showroom, addition to parts and accessories building.

Planning Authority Ref. 0221/98 refers to a March 1998 decision to grant permission for erection of a single storey distribution office to replace temporary distribution office building.

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

- 4.1. The appellant made a submission to the Local Authority which raised the following matters:

- The land parcel accommodates underground and overhead powerlines and a substation which requires wayleaves / radial clearance / crash barriers etc. There is also an existing watermain on the lands requiring a 16.75 m wayleave. The lands are significant in area and are required for, and are integral to, occupation by this essential energy and water infrastructure. As such the entire land parcel should be removed from the map. At the very least the part of the land parcel affected should be removed from the map.
- Insufficient water supply capacity to serve the lands. Planning permission is required for the water network upgrade. Under Reg. Ref. 3228/20 Uisce Éireann (UÉ) conditioned that a water connection can be facilitated if upgrade works are undertaken 850 m east of the lands, which comprise lands not in the landowner's control. Water infrastructure does not adjoin the site; works are required to upgrade the network and they are not minor works; as such the lands are out of scope for the tax.
- The lands are not vacant or idle. They are occupied by a significant business, McSport, an independent supplier of sports equipment in Ireland. It is considered that this use is part of the recreational infrastructure which facilitates sports and recreation across the State and it therefore falls within the exclusionary criteria (iii)(VII) 'recreational infrastructure, including sports facilities and playgrounds.'

## 5.0 Determination by the Local Authority

5.1 The Local Authority determined that the lands satisfy the relevant criteria as set out in section 653B on the basis that they:

- 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 confirmed by Uisce Éireann in its report dated 25<sup>th</sup>

April 2024 and having regard to the brownfield nature of the lands and their location within the built up footprint of the city

- Are vacant / idle as there is no active authorised use on the lands which is 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.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The following points are made in support of the appeal:

#### Public water supply

- It is not accepted that the parcel meets the requirements of Section 653B(b) in terms of water supply. The existence of planning permission is not a criteria which should be considered.
- The position of UÉ remains that a water connection to the parcel would not be permitted unless there is an upgrade to the UÉ public network and that UÉ has no plans to undertake the upgrade. It is unclear on what basis UÉ deems the upgrade not to be substantial.
- The capacity to be considered is that of the entire public infrastructure and facilities, not just of the water supply plant. Where the capacity does not exist or is deficient at the relevant date the parcel should be excluded from the map.
- The cost of upgrade works to public infrastructure that service the wider area as well as the relevant land cannot be levied on a landowner to bring the relevant land within scope.
- Where a statutory consent, including a road opening licence is required for any works (as it would be in this case), the lands must be deemed to be out of scope and excluded.

#### Foul sewer drainage

- A condition of planning application 3228/20 relating to the adjoining parcel to the north is that the new wastewater drainage system includes a spur to facilitate a future connection to allow development within this area of the parcel. In the absence of this wastewater infrastructure, access to the public wastewater network would not be possible for this part of the lands.

#### Business operating on part of the parcel

- The land parcel accommodates a warehouse building and yard trading as McSport, a trade business, that is liable for and pays commercial rates.
- The portion of the parcel occupied by the warehouse building is not vacant or idle as it provides storage for McSport, a sports and fitness retailer that supply products for home and commercial use. Sales are predominantly online based.
- It is considered that the existing use of the subject lands for the importation and storage of motor vehicle parts and accessories is a Class 5 use and it is also considered that the storage for onward distribution of sports equipment falls under Class 5 use. Given that Class 5 was a previously established use, the existing use of the warehouse would not constitute a change of use.
- It is not reasonable to consider the land used by McSport, a rate paying authorised business, is 'vacant or idle.'

#### Energy infrastructure and Water infrastructure

- There are underground and overhead power lines within the parcel. ESB Networks require a lateral clearance to be 20 m on each side of the 110Kv centreline, a radial clearance of 23 m to be maintained from the centre of each 110Kv tower and crash barriers to be provided around new and existing masts.
- In terms of water infrastructure there is a steel trunk watermain within the parcel. UÉ requires a 16.75 m wide wayleave centred over the watermain.
- ESB and UÉ clearance requirements have a material impact on the developable area of this parcel, with lands effectively sterilised by energy and water infrastructure. The aggregate area impacted is 0.286 ha representing 35% of the total area of this parcel.

- The Local Authority's determination fails to record that following engagement and the envisaged joint assessment between the ESB and the landowner it was decided that the 110kv line would not be undergrounded due to costs. As such the wayleave of 20 m on either side of the 110 kv line will continue to affect the parcel. Furthermore, following engagement with UÉ the watermain was not diverted and the 16.75 m wayleave relating to this infrastructure continues to affect the land parcel.
- While it is not uncommon that a Development Plan may have an objective that a large piece of public infrastructure would be moved or undergrounded this is a matter between the relevant utility company and the planning authority; it is not open to the landowner to undertake such works. Unless or until it is ever actually moved the land through which it runs must be considered to be land which is 'required for, or is integral to occupation by' the relevant infrastructure.
- The area impacted by the infrastructure is 1.827 hectares or 42% of the parcel.
- The infrastructure impacting the parcel is mapped and the required wayleaves are confirmed by ESB and UÉ and those areas must be excluded from the final map.

Attachments received with the appeal are as follows:

- Site Location Plan
- Local Authority Notification
- Local Authority Evaluation Report
- UE submission
- Submission (and attachments) made to Local Authority

## 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 Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion 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 subject lands are zoned Z14 – 'Strategic Development and Regeneration Areas' (SDRA) and are considered within the scope of section 653B(a)(ii).
- 7.3 Section 653B(c)(ii) provides for exclusion of lands zoned for a mixture of uses including residential use from the RZLT map unless it is reasonable to consider that the land is vacant or idle. 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. In terms of determining whether lands are vacant or idle the Guidelines state the following:

*Setting out the text in the legislation 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised 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; the first step is to determine if the development on the land is*



*required for or integral to a trade or profession being carried out on the land or adjacent to the land.*

The appellant contends that the lands accommodating the warehouse is not vacant or idle on the basis that it is used for storage of sports goods by a trade retail business which supply products for home and commercial use. Following an online planning search, this use does not appear to have the benefit of a grant of planning permission; I consider this activity would constitute a material change of use on the subject lands. I note the Local Authority advise that part of the warehouse on the land is used for storage in connection with a retailing company based in nearby Robinhood Road.

Having regard to the foregoing and also in relation to section 653B(c)(ii), I consider this land parcel to be 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, with the main McSport premises not located on or adjacent to the land and also that there appears to be a material change of use on the lands which would appear not to have the benefit of planning permission. As such, I consider that the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended.

- 7.4 In terms of section 653B(b) the site is within the urban area and it is reasonable to consider that the land may have access to 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 for such development.
- 7.5 Notwithstanding, the appellant considers that the land parcel does not meet the requirements of section 653B(b) in terms of water supply. In this regard UÉ has advised that there is water supply capacity to serve the lands and that works would be required to upgrade the water network involving the upsizing of approximately 10 m of PVC piping. Having reviewed and confirmed the 10-year Water Supply Capacity Register for Dublin City and Suburbs as published by UÉ in June 2023 I note there is capacity available to meet 2032 population targets. In terms of the requirement to upgrade the water supply network as described above, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states the following: "Information from stakeholders such as Irish Water will play a key

role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.’ Therefore, I conclude that upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.6 I do not concur with the appellant’s assertion that the lands should be considered out of scope on the basis that the upgrade may require provision of a statutory consent in the forms of a road opening licence. It is a common and routine occurrence to apply for a road opening licence should works be required to a public road. The RZLT Guidelines at page 24 state that ‘examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams or rail infrastructure where statutory consents are required.’ The appeal lands do not fall within these aforementioned categories.
- 7.7 The appellant refers to a previous planning application for a mixed-use development on adjoining lands to the north (Planning Authority Ref. 3228/20 refers) which conditioned that a spur would be required to facilitate a future wastewater connection to allow development at the southern portion of the overall landholding. While noting that this part of the landholding does not adjoin a public road, it adjoins lands within the appellant’s control which can connect to the nearest sewer which is located, according to UÉ, 35 m north of the land parcel, along the Naas Road. As such I conclude that this part of the landholding does not meet the criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.8 Referring to Section 653B(c)(iii) (III) and (V) of the Taxes Consolidation Act 1997 as amended the appellant considers that the parts of the land parcel affected by energy infrastructure comprising, inter alia, overhead and underground powerlines and also by water infrastructure, namely an existing steel trunk watermain, should be excluded from the scope of the RZLT.

Section 3.1.2 of the Guidelines, ‘Exclusions from the Map’ state that exclusions of particular lands as set out in the legislation and as clarified in the guidelines should be taken into account. With specific reference to Land Required for Infrastructure

and Community Services the guidelines state: “As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities.’

The Guidelines note a number of uses which may be required or are provided on either residential or mixed-use lands which permit housing are to be excluded from the map. These are set out in section 653B(c)(iii)(I) – (VII) and include (III) energy infrastructure and facilities and (V) water and wastewater facilities.

Regarding the energy infrastructure and water infrastructure on the land parcel, I note the lands are not specifically identified for the provision of such infrastructure in the Dublin City Development Plan 2022-2028. The Guidelines state that where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above 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 land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out. Noting that that the Dublin City Development Plan 2022-2028 does not identify the subject lands for the provision of energy and water infrastructure in accordance with the above, it is reasonable to consider that the land parcel is in scope.

UÉ has confirmed to the Local Authority that the substantial 30” strategic watermain traverses the lands and indicates a wayleave will need to be maintained if the watermain is not to be diverted. I note the appellant’s comments that following engagement with the ESB a decision was made that the 110 kv line would not be undergrounded due to costs and that the wayleave would continue to affect the parcel. In this context it is legitimate to refer to the permitted development on adjoining lands comprising in excess of a thousand residential units (Reg. Ref. 3228/20 refers), which incorporates the aforementioned on-site electricity infrastructure and water infrastructure with open spaces and roads serving the development aligned along the utility routes and wayleaves. This permission demonstrates that a residential development can be accommodated with the aforementioned infrastructure being in situ. This reinforces my view that the subject lands are not required for, or integral to, occupation by either energy infrastructure and facilities and water infrastructure and facilities. As referred to in section 7.2 above, all of the subject lands which are zoned for a mixture of uses, including residential use, are in scope having regard to section 653B(ii).

7.9 An Bord Pleanála is restricted in the appeals process to considering whether the land meets the qualifying criteria set out in section 653B only. The grounds of appeal relating to the potential costs of upgrade works to public infrastructure and how these costs would be levied fall outside the qualifying criteria included in section 653B and cannot be considered in the appeal process.

## 8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Parcel ID DCC000064293 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and therefore I recommend that the Local Authority determination be confirmed, and the lands are retained on the 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 DCC000064293 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b), surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of section 653B(c)(iii)(III) and (V) for exclusion from the map. The land is 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, with the main McSport premises not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission. 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 land does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

## 10.0 **Recommended Draft Board Order**

### **Taxes Consolidation Act 1997 as amended**

#### **Planning Authority: Dublin City Council**

#### **Local Authority Reference Number: RZLT-000236**

**Appeal** by O'Flynn Construction Co. 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 27<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Former Nissan Site, Naas 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 and direct the local authority to retain the lands identified as Parcel ID DCC000064293 on the final map.

### **Reasons and Considerations**

The lands identified as Parcel ID DCC000064293 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b), surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of section 653B(c)(iii)(III) and (V) for exclusion from the map. The land is 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, with the main McSport premises not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission. 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 land does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

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

30<sup>th</sup> September 2024