



An  
Coimisiún  
Pleanála

## Inspector's Report

**ACP-323311-25**

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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

Lands at Riverside, Church Road, Tullamore, Co. Offaly

### Planning Authority

Offaly County Council

### Planning Authority Reg. Ref.

RZLT-D-06

### Appellant

Better Value Unlimited Company

### Inspector

John Duffy

## **1.0 Site Location and Description**

- 1.1. The subject site comprises lands (c 3.865 ha) at Riverside, Church Road, Tullamore, Co. Offaly (Land Parcel ID OYTULL000069 refers) in Tullamore town centre. The site is bounded by the Tullamore River to the north and by Tullamore Shopping Centre and housing to the south.

## **2.0 Zoning and Other Provisions**

- 2.1. The subject site is zoned Town Centre / Mixed Use in the Offaly County Development Plan 2021-2027 and is within the core retail area of Tullamore.

- 2.2. Land Use Zoning Objective – Town or Village Centre / Mixed Use:

It is an objective of the Council to: LUZO-02: Provide for, protect and strengthen the vitality and viability of town/village centres, through consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services.

Residential development is 'Normally Permitted' on Town Centre / Mixed Use zoned lands, as set out in Table 12.1 Land Use Zoning Matrix of the County Development Plan.

- 2.3. Key Town (Tullamore)

SSP-06 - It is Council policy to strategically prioritise the development of Tullamore to underpin its role as a designated Key Town and driver of economic development for the county.

SSP-07 It is Council policy to require sustainable, compact, sequential growth and urban regeneration in Tullamore by consolidating the built-up footprint through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised, vacant and derelict lands for residential development and mixed use to facilitate population growth.

- 2.4. The site is identified as Opportunity Site No. 6 in Tullamore as set out in the Offaly County Development Plan 2021-2027.

- 2.5. Part of the site is identified within a Flood Zone.

### **3.0 Planning History**

#### **3.1. RZLT Appeal**

An Bord Pleanála Ref. ABP-316954-23 / Planning Authority Ref. RZLT-D-05 refers to a September 2023 decision to include the subject lands on the RZLT map given that they met the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

#### **3.2. Other relevant planning history**

PA Reg. Ref. PL2/19/96 / ABP-306395-20 - Permission granted in May 2021 for demolition of existing buildings and structures on site and erection of retail-led, mixed use town centre development; the application is accompanied by An Environmental Impact Assessment Report (EIAR) at Church Road, Tullamore, Co. Offaly.

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

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

- The Town Centre / Mixed Use site is designated as a constrained land use area due to flood risk. The designation may preclude residential development on parts or all of the site. Therefore the site should be excluded from the RZLT map.

### **5.0 Determination by the Local Authority**

- 5.1. The Local Authority determined that the site constitutes lands satisfying the relevant criteria as set out in Section 653B of the Taxes Consolidation Act, as amended, and that they are in scope for the following reasons:

- The site is zoned 'Town Centre / Mixed Use' and is suitable for a mixture of uses, including residential use, as set out in Section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended.
- The site is serviced as set out in Section 653B(b) of the Taxes Consolidation Act 1997 as amended.

- The site is not unduly affected by matters to a sufficient extent to preclude the provision of dwellings as set out in Section 653B(c) of the Act
- The site lies vacant and idle as set out in Section 653B(c)(ii).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Land Parcel ID OYTULL000069 is not suitable for residential development due to flood risk.
- While there is an existing permission for a non-residential development on the lands (ABP Ref. 306395-20 refers), residential uses are classified as 'highly vulnerable' in areas of flood risk. There is no evidence presently available to demonstrate flood risk can be mitigated to a level that would support residential development.
- Section 653B makes reference to contaminated lands and those with archaeological or historic remains; the term 'including' is used which implies other relevant constraints such as flood risk may also be considered.
- Residential development may be permitted on lands subject to a certain degree of flood risk, where justified by appropriate evidence and design, however such determinations can only be made following a thorough assessment by the planning authority. In the absence of a comprehensive flood risk assessment and a detailed development proposal, it is premature to assume the site's suitability for residential development.
- Having regard to the foregoing, it is requested the site be removed from the final RZLT map.

The appeal includes the following attachments:

- Copy of appellant's RZLT submission to the Local Authority dated 31<sup>st</sup> March 2025.
- Copy of Local Authority's determination to include the land parcel in the Final Map.
- Site maps identifying the lands within the appellant's ownership.

## 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 Commission'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. 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 the grounds of appeal, the determination of the local authority on the submission made during the public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, the 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, as amended, sets out the criteria for inclusion on the map, and states that the first consideration 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 identified for inclusion on the RZLT map are included in the Offaly County Development Plan 2021-2027 and are zoned 'Town Centre / Mixed Use' for a mixture of uses, including residential use as required by section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.3. Having regard to section 653B(b) these brownfield lands are 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.
- 7.4. 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. Section 3.1.2 of the Guidelines relates to 'Exclusions from

the Map.’ 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 second step is to determine if the development is unauthorised.*

*If the development on the land complies with the first step and is not unauthorised, then it is not in scope and should not be included within the maps. Conversely, if development on the land complies with the first step but is unauthorised development, then it is in scope and should be included on the maps. Section 2 of the Planning and Development Act 2000 regarding ‘unauthorised development’ must clearly inform assessment in this regard. Aside from uses commenced before 1 October 1964, or exempted development (within the meaning of section 4 of the Act of 2000) the development of the land must be authorised.*

The Land Parcel meets the definition of ‘vacant or idle land’ as set out above in that the land is not required for or integral to a trade or profession being carried out on the land or adjacent to the land and I concur with the Local Authority that the lands are vacant or idle in accordance with section 653B(c)(ii). I note the appellant has not disputed this fact.

- 7.5. Section 4.1.1 vi) ‘Exclusions’ of the Guidelines state, as identified in Section 3.1.2, there are a number of reasons why zoned and serviced land could be excluded from the map. This includes land in need of specific remediation for contamination, land which has significant known archaeological remains, land on the derelict site register, land required for infrastructure identified in section 653B(c)(iii)(I)-(VII), and exclusions for existing uses on land. In this case, the main ground of appeal is that the Land Parcel is affected by flooding and as such residential development may be precluded or is unsuitable on these lands. I note the subject site has a ‘Constrained Land Use’ designation in the County Development Plan due to flood risk arising from the

adjoining Tullamore River. Notwithstanding, I note that a detailed Flood Risk Assessment was carried out in respect of the development permitted on these lands under PA Reg. Ref. PL2/19/96 / ABP-306395-20, with the detailed hydraulic model developed for the site confirming the site was within Flood Zone C based on the latest available survey information at that time. There is a low probability of flooding on lands within Flood Zone C and in this regard residential use is normally appropriate.

7.6. Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of residential development including contamination and the presence of known archaeological or historic remains. While flood risk is not specifically mentioned in this sub-section, the use of the word 'including' would indicate that relevant matters of the site's physical condition are not restricted to contamination or archaeological and historic remains. Residential development can be provided on appropriately zoned lands subject to a certain level of flood risk, if justified by the proper planning and sustainable development of the area, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of residential development. Based on the information available I have no evidence that the physical condition of the land precludes provision of residential development and therefore I consider the land should remain on the RZLT map.

7.7. Having regard to the foregoing, I consider that Land Parcel ID OYTULL000069 should remain for inclusion on the final RZLT Map given that the lands are zoned for a mixture of uses including residential development, that they are vacant or idle and that they do not fall within the exemptions as set out under section 653B(i) – (v) of the Taxes Consolidation Act 1997, as amended.

## **8.0 Recommendation**

8.1. I consider that the lands identified as Parcel ID OYTULL000069 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 the Local Authority determination should be confirmed and the lands retained on the map.

## **9.0 Reasons and Considerations**

- 9.1. The lands identified as Parcel ID OYTULL000069 on the RZLT Final Map zoned 'Town Centre / Mixed Use' are considered to be within scope of section 653b(a). The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). The lands, located in an urban area, have access to public infrastructure and facilities necessary for dwellings to be developed. No capacity reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the 'Town Centre / Mixed Use' zoning objective that applies to these lands. While the subject site has a 'Constrained Land Use' designation in the Offaly County Development Plan 2021 - 2027 due to flood risk, it is considered that residential development can be provided on appropriately zoned lands subject to a certain level of flood risk, if justified by the proper planning and sustainable development of the area, and as such, the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of residential development. The subject lands are considered to be in scope, given that they accord with the criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## **10.0 Recommended Draft Order**

**Taxes Consolidation Act 1997 as amended**

**Planning Authority: Offaly County Council**

**Local Authority Reference Number: RZLT-D-06**

**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 Offaly County Council on the 26<sup>th</sup> day of June 2025 in respect of the site described below.

**Lands at:** Riverside, Church Road, Tullamore, Co. Offaly

### **Decision**

The Commission 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:

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The Commission confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID OYTULL000069 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 OYTULL000069 on the RZLT Final Map zoned ‘Town Centre / Mixed Use’ are considered to be within scope of section 653b(a). The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). The lands, located in an urban area, have access to public infrastructure and facilities necessary for dwellings to be developed. No capacity reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the ‘Town Centre / Mixed Use’ zoning objective that applies to these lands. While the subject site has a ‘Constrained Land Use’ designation in the Offaly County Development Plan 2021 - 2027 due to flood risk, it is considered that residential development can be provided on appropriately zoned lands subject to a certain level of flood risk, if justified by the proper planning and sustainable development of the area, and as such, the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of residential development. The subject lands are considered to be in scope, given that they accord with the criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

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.

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John Duffy  
Planning Inspector

16<sup>th</sup> October 2025