



An
Coimisiún
Pleanála

Inspector's Report ACP-323328-25

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

Eastern side of Walkinstown Avenue, at the junction of Walkinstown Avenue and Longmile Road, Dublin 12.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000280

Appellant(s)

O'Flynn Construction (Co.) Unlimited

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The site is located to the east of Walkinstown Avenue and is part of the former Nissan site. The site is characterised by an open hardstanding area. There is a concurrent RZLT case on an adjacent site to the south/southwest (323328), which is also part of the same landholding and what was formerly the Nissan site.

2.0 Zoning and Other Provisions

- 2.1. The site is zoned Z14 Strategic Development and Regeneration Areas (SDRA) under the Dublin City Council Development Plan 2022-2028 with a stated objective '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'.

3.0 Planning History

- 3.1 ACP-323328-25: Appeal of RZLT determination concerning site located to the south/southwest also part of the same landholding and part of the former Nissan site.
- 3.2 ABP-320436-24: Decision to confirm the determination of the local authority to include lands on the RZLT MAP.
- 3.3 ABP-316975-23: Decision to confirm the determination of the local authority to include lands on the RZLT MAP.
- 3.4 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. The lands subject to the determination are part of the site subject to this permission.
- 3.5 Ref. 3060/23 refers to a February 2021 decision to grant permission for modifications to the previous application under 3228/20.

There are a number of applications that relate to the former Nissan site, from which the lands in this case are part of.

- 3.6 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.
- 3.7 Ref. 2799/12 refers to an August 2012 decision to grant permission to erect a glazed lean-to walkway between two existing showrooms.
- 3.8 Ref. 3677/05 refers to an August 2005 decision to grant permission for a single storey warehouse adjacent to the parts warehouse.
- 3.9 Ref. 1626/99 refers to a July 1999 decision to grant permission for a motor (trade display) showroom, addition to parts and accessories building.
- 3.10 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.
- 3.11 Ref. 3047/80: Permission for extension to warehouse and offices.
- 3.12 Ref. 0194/78: Permission for storage area for spare parts and accessories.

4.0 Submission to the Local Authority

- 4.1 The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map on the basis that:
 - Servicing the land for development permitted under ref no. 3228/20 requires upgrades to public water infrastructure on public lands outside and away from the lands with the lands not meeting the criteria under Section 653B(b) with no sufficient water capacity and the landowner incurring costs to service the lands.
 - There is insufficient wastewater capacity on the Longmile Road and will require a spur through the lands to the Naas Road and does not meet the criteria under Section 653(b).
 - The lands are required for, or is integral to, occupation by energy, water and water infrastructure and do not meet the relevant criteria under Section 653B(c)(iii).

- Part of the lands are subject to a short-term lease to Parma Motors, a car sale business near the lands and have been used for this purpose since before the 1st January 2022. The wider lands have permission for office use, light industrial use and warehouse and repository uses. The use on site is an established authorised use on site with reference to planning history under ref no. 367705 and 3228/20. The lands are not vacant or idle and should be excluded.

5.0 Determination by the Local Authority

- 5.1. The Planning Authority determined that the site satisfies the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 for inclusion on the RZLT map for the following reasons:

The lands:

- are zoned for a mixture of uses, including residential use,
- have access, or can be connected, to public infrastructure and facilities and with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25 April 2025,
- are vacant/idle, as there is no active authorized 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, including sports facilities and playgrounds,
- do not qualify for an exemption under S.653 B (c) (iii) of the TC Act
- meet the other qualifying criteria Section 653B of the TC Act, as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The site does not meet the criteria under Section 653B(b) in respect of access to public infrastructure and facilities. The appellants highlight that the Uisce

Eireann submission indicates that the lands are serviceable, however the appellants consider this does not meet the criteria under Section 653B(b). The appellants refer to a letter from Uisce Eireann when permission was being sought under ref no. 3228/20 that requires an extension of the network (water supply) and that UE have no plans to carry out such with such to be undertaken by the developer. The appellants highlight that the cost of such works is significant and will take time so being liable for RZLT during the period it would take to facilitate the upgrades is unfair.

- The appellant highlights that capacity is not available based on the UE response to their application and such was not available on either the 1st of January 2024 or 1 of January 2022.
- The appellants highlight that the permitted development has water connection points at Naas Road and Walkinstown Avenue and the upgrade works required are located 850m from the lands at the junction Longmile Road and Drimnagh Road and there is no relationship between the connections works benefiting the lands in question and upgrade works which benefit the wider area and are the responsibility of UE. The appellants highlight the only way of developing the land is to accept the cost of funding public infrastructure and such is not a reasonable interpretation of Section 653B(b).
- The UE response to the RZLT submission indicates that water capacity for the GDA is constrained from time to time. The appellants are of the view that the land being serviceable is insufficient to meet the criteria under Section 653B and that facilitating residential development on these lands will entail considerable cost and time and also that water supply capacity is currently constrained.
- The appellants highlight that part of the lands are occupied by a business, Parma Motors and the land in question is not vacant or idle. The appellants highlight the planning history of the site and disagree with the Planning Authority's classification of the entire Nissan site as light industrial with a variation of classes of use on site. It is highlighted that the existing use by Parma Motors of part of the site is authorised based on the planning history with storage an authorised use on the lands in question.

- The land in question does qualify for an exemption under Section 653B(iii) relating to energy infrastructure and facilities. The site is traversed by both overground and underground powerlines that require a 23m clearance from development. The site is also impacted by a steel trunk watermain that requires a 16.75m wide wayleave and such have a material impact on the developable area of the site, the area impacted being 1.827 hectares or 42% of the lands in question. In this case the land is required for energy infrastructure and facilities.
- The appellant highlights that following engagement with the ESB and UE that the overground powerline will not be undergrounded with a 20m wayleave on each side and the watermain will not be diverted with a 16.75m wayleave. The appellants highlight that they cannot develop the site until the public infrastructure is moved, and it may take years or never be moved.
- The appellant refers to the RZLT Guidelines and Circular Letter NRUP 02/2023 and that mapped infrastructure such as the infrastructure in this case should be omitted from the map. The appellants do not consider the Planning Authority's determination that the development has been configured around the utilities is sufficient reason to include on the map is incorrect and fails to take account of the wording of the legislation, the Guidelines and Circular Letter on this matter.

6.2. Planning Authority Response

No response.

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 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 lands are under Section 653B(a)(ii) as they are zoned for a mixture of uses, including residential use being zoned Z14, SRDA. The lands appear to consist of an open hardstanding area that was previously used for the storage of motor vehicles as part of the use of the site by Nissan. Based on the information on this file the former and authorised use of this complex was for a singular operation, which based on the information on file including the appellants information was importation of motor and light industrial vehicles (and parts) for distribution. From examining the planning history there are no permissions since the closure of the Nissan Plant relating to the lands in question with some permissions impacting other parts of the overall Nissan site.
- 7.3. The appellants indicate that an existing business, Parma Motors is operating on part of the lands on site and that this use is not an unauthorised use with the lands meeting the exclusion under Section 653B(ii), in relation to lands referred to under 653B(a)(ii), unless it is reasonable to consider that the land is vacant or idle. The definition of lands that are vacant or idle land “means land, having regard only to development (within the meaning of the Act of 2000), which is not unauthorised, is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land” under Section 653A.
- 7.4. Based on the information on file the business operation on site relates to storage of vehicles associated with an existing motor sales business which has its main operation 150m from the site. The appellants indicate that they are leasing a portion of lands (north of land parcel, see Figure 2, grounds of appeal). The appellants emphasise that the authorised use of the lands was for storage of vehicles associated with the wider Nissan operation, which was importation of motor and light industrial vehicles (and parts) for distribution. I acknowledge that there may be a business operating on site which entails storage of motor vehicles in an area that was previously authorised for such as part of a wider singular operation. I would

consider that based on planning history of these lands that the use being carried out by Parma Motors on part of the lands in question is similar in nature and in this regard would not be an unauthorised use. Notwithstanding such, this use is being carried out on part of the lands with the remainder of the lands currently not in use and falling under the definition of vacant or idle as set down under section 653A. In this regard, I would consider that the part of the site being used by Parma Motors is eligible for exclusion from the map on the basis of Section 653(ii), however the remainder of the site is not eligible for exclusion on the basis of Section 653(ii) being land is vacant or idle under the definition of such under Section 653A.

7.5 The definition of “‘vacant or idle land’ means land which, having regard only to development (within the meaning of the Act 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”. In this case part of the site is being used for storage of motor vehicles associated with a car sales business, whose main operation is elsewhere in the area. Given the planning history of the site and nature of historical authorised use for car storage, I am satisfied that the existing ongoing operation for car storage is not unauthorised and that this section of site should be excluded from the map. The remainder of the site should be included on the maps on the basis that it does not meet any criteria that make it eligible for exclusion under Section 653B.

7.6 The appellants refer to the fact the lands do not meet the criteria under Section 653B(b) relating to whether it is reasonable to consider may have access, or be connected, to public infrastructure. The Uisce Eireann (UE) response to the RZLT submission states that the site is serviceable and that wastewater capacity is classified as green with water supply for the GDA at Amber status so may be constrained from time to time. It is further stated that depending on the size of the development proposed, upgrades to the network may be required with UE having no project to support this and any upgrades being developer led. The appellant has indicated that based on their consultations with UE an extension to the network is required and relates to a location 850m from the site. The appellants are of the view that the level of works, cost and time required to carry out infrastructural works to facilitate the development are such that the lands should be excluded from the map as they do not meet the criteria under Section 653B(b).

- 7.7 I do not accept the appellants argument that the lands in question do not meet the criteria under Section 653B(b). The wording of this criterion is that “it is reasonable to consider may have access, 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 available for such development”. The lands in question are part of larger landholding (O’Flynn Construction) that has road frontage and access to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply being in a established urban location and having road frontage, and existing connections to public infrastructure as the site has been developed previously. The Uisce Eireann submission to the RZLT confirms that there is capacity for both wastewater and water supply although it does state that water supply capacity is amber status for the Greater Dublin Area. The submission does indicate that to facilitate the development upgrades are required within the public area and such will have to be developer led. The appellant has indicated that to facilitate the development and an extension to the water supply network is required and the works are within the public area. I would consider that the site falls within the scope of the criteria under Section 653B(b) on the basis that it is reasonable to consider that the lands in question may have access to public infrastructure and facilities. This is on the basis that it is within the appellants control to service the site with any upgrades required in the public area. I would note that the lands in question are part of a larger landholding on which permission has been granted for a 10-year permission under ref no. 3228/20 for a mixed-use development including 1137 apartment units, communal amenity space, retail units, office accommodation, primary healthcare centre, childcare facility and a gymnasium. The lands subject to this case are a part of the this permitted development. This permission was granted in April 2021 and is a 10-year permission. It is reasonable to conclude that the applicants/appellants would have had to demonstrate that the proposed development has access to public infrastructure and facilities to develop the site. In this regard I consider that the lands meet the criteria under Section 653B(b) for inclusion on the RZLT map.
- 7.8 The third argument the appellant puts forward is that it qualifies for exclusion under Section 653B(iii)(IV) in that it is reasonable to consider is required for, or is integral

to, occupation by energy infrastructure and facilities. The appellants argue such on the basis of existing overground and underground power lines traversing the site as well as steel trunk watermain. I would consider that the lands do not qualify for exclusion on this basis. I would again reiterate that the lands in question are part of larger landholding on which permission has been granted under ref no. 3228/20 for a mixed-use development (predominantly residential) and the presence of such infrastructure has not been an impediment to achieving a permission on site with the design and layout having regard to existing infrastructure. Such may require consultation with the statutory undertakers responsible for such infrastructure and the fact a permission has been granted on lands impacted by such indicates the feasibility of development despite the presence of such. In this regard I do not consider that the lands should be excluded from inclusion on the map based on Section 653B(iii)(III).

8.0 Recommendation

- 8.1 Having regard to the foregoing, I consider that part of the lands identified as Parcel ID DCC000064150 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The majority of site apart from the lands currently being leased by Parma Motors for the purpose of storing motor vehicles and as indicated on Figure 2 of the grounds of appeal submission does satisfy the criterion for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997, as amended and does not meet the criteria for exclusion from the map under Section 653B(iii)(I)-(VII).

The extent of the site in use by Parma Motors as identified in Figure 2 shall be excluded from the map on the basis that the nature of use is similar in nature to authorised use based on the planning history and in this regard would not be an unauthorised use and would merit exclusion on the basis of Section 653B(ii).

9.0 Reasons and Considerations

- 9.1 In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 as amended, which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made with the clear parameters of the applicable legislation.

The lands in question are located on lands zoned mixed use identified within the current Dublin City Council Development Plan 2022-2028 are considered in scope of Section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended. The lands are serviced or serviceable and are accessible and 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.

The lands being leased by Parma Motors and currently being used to store vehicles as identified in Figure 2 of the appellants' grounds of appeal submission located on lands zoned mixed use identified within the current Dublin City Council Development Plan 2022-2028 are considered to fall within the provisions of Section 653B(ii) of the Taxes Consolidation Act 1997, as amended, and would not constitute land that is vacant or idle having regard to the existing use, which would not be an unauthorised use based on the planning history of these lands. For this reason, this specific portion of land is eligible for exclusion from the final RZLT map. The remainder of the site does satisfy the criterion for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997, as amended and does not meet the criteria for exclusion from the map under Section 653B(iii)(I)-(VII).

10.0 Recommend Draft Commission Order

Taxes Consolidation Act 1997, as amended.

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000280

Appeal by O'Flynn Construction (Co.) Unlimited 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 2025 in respect of the site described below.

Lands at: Land on the eastern side of Walkinstown Avenue, at the junction of Walkinstown Avenue and Longmile Road, Dublin 12.

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:

The Commission confirm the determination of the local authority in part and set aside the determination of the local authority in part and allow the appeal in part in relation to part of the lands identified as Parcel ID DCC000064293. All lands subject to the determination shall be included on the final map apart from a section of the lands to the north occupied by the existing operation by Parma Motors and as identified on Figure 2 of the appellants grounds of appeal submission. This section of the lands shall be excluded from the final map.

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Reasons and Considerations

The lands in question are located on Z14- a mixed-use zoning under the current Dublin City Council Development Plan 2022-2028 are considered in scope of Section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended. The lands are serviced or serviceable and are accessible and 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.

The lands being leased by Parma Motors and currently being used to store vehicles as identified in Figure 2 of the appellants' grounds of appeal submission located on lands zoned mixed use identified within the current Dublin City Council Development Plan 2022-2028 are considered to fall within the provisions of Section 653B(ii) of the Taxes Consolidation Act 1997, as amended, and would not constitute land that is vacant or idle having regard to the existing use, which would not be an unauthorised use based on the planning history of these lands. For this reason, this specific portion of land is eligible for exclusion from the final RZLT map. The remainder of the site does satisfy the criterion for inclusion on the map set out in Section 653B of the Taxes Consolidation Act 1997, as amended and does not meet the criteria for exclusion from the map under Section 653B(iii)(I)-(VII).

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.

Colin McBride
Senior Planning Inspector

14th November 2025