



An
Coimisiún
Pleanála

Inspector's Report ACP-323338-25

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-000277

Appellant(s)

O'Flynn Construction Unlimited Company

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The site is located at the junction of Longmile Road and Walkinstown Avenue and is part of the former Nissan site. The site is characterised by a large commercial building and associated car parking. There is a concurrent RZLT case on an adjacent site to the north/northeast (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 north/northeast also part of the same landholding and part of the former Nissan site.
- 3.2 ABP-320434-24: Decision to confirm the determination of the local authority to include lands on the RZLT MAP.
- 3.3 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. This site overlaps with part of the lands subject to this RZLT determination.
- 3.4 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.

- 3.5 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.
- 3.6 Ref. 2799/12 refers to an August 2012 decision to grant permission to erect a glazed lean-to walkway between two existing showrooms.
- 3.7 Ref. 3677/05 refers to an August 2005 decision to grant permission for a single storey warehouse adjacent to the parts warehouse.
- 3.8 Ref. 1626/99 refers to a July 1999 decision to grant permission for a motor (trade display) showroom, addition to parts and accessories building.
- 3.9 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.
- 3.10 Ref. 3047/80: Permission for extension to warehouse and offices.
- 3.11 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:
 - The submission seeks exclusion on the basis that the lands are not vacant or idle and the lands does not meet the criteria as defined by 653B.
 - It is incorrect that a material change of use had taken place on the lands without the benefit of planning permission with the site occupied by McSport, a fully authorised use.
 - It is not correct that the land has access to public infrastructure and facilities in particular foul drainage and water supply and wastewater infrastructure.
 - DCC and ABP failed to consider whether the site met the criteria for inclusion on the draft map on the relevant dates identified in Part 22 of the TCA 1997.

- An application is for JR of the Boards 2024 determination is pending before the High Court under Record 2024/1586JR. This submits that the Boards and DCC determinations are wrong and unlawful.
- The submission also seek that the landowner should be invited to comment on Uisce Eireann's letter before determination.

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 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, including sports facilities and playgrounds,
- 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 appellant sates that the lands in question do not satisfy the relevant criteria as defined in Section 653B of the TCA.
- It is noted that that the appellant has made an application to the High Court for Judicial Review of the determination for these lands under ABP-320434-24

with such pending under Record Number 2024/1586 JR. The appellant has submitted copy of the Statement of Grounds and requested it to be considered in this appeal.

- The lands should be excluded on the basis of Section 653B(ii), that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. DCC's conclusion that the land is vacant or idle is incorrect with the lands in question and existing structure on site occupied by McSport and the structure on site being used as storage for the existing business that sells sports equipment online. The existing premises is key to the operation of this business in conjunction with their existing facility in Robinhood Industrial Estate. The activity being carried out is a rate paying business.
- In terms of whether the existing use is unauthorised there was a failure by DCC to consider the planning history and note errors in permissions identified as relevant to the site with a number of permissions relating to adjoining lands identified. It is noted that a small part of the site relating to ref no. 3228/20 overlaps with the lands in question and such should not be included with reference to Section 653O.
- It is noted that use of parcel of land for warehousing is deemed unauthorised by DCC. It is noted that DCC's conclusion that the former Nissan site from which the site is part of is a light industrial use and does not take into account that individual buildings were subject to separate permission which do not fall under the light industrial description. The appellants highlight that the structure being used by McSport has permission as standalone warehouse structure and that the only structure on site with a condition restricting use is the showroom building on site.
- The site does not meet the criteria under Section 653B(b) in respect of access to public infrastructure and facilities. The appellant highlights that the Uisce Eireann submission indicates that the lands are serviceable, however the appellant considers this does not meet the criteria under Section 653B(b). The appellant highlights that the UE submission states that upgrades to the network may be required and such shall be developer led with no specifics regarding the nature of upgrades and the fact that the UE submission

indicates that water supply is at amber status and may be constrained from time to time. The UE submission is not clear regarding whether upgrades relate to water and wastewater or both.

- 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 with an aggregate area of 0.286 hectares impacted representing 35% of the total area of the parcel of land. In this case the land is required for energy infrastructure and facilities.

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 are occupied by an existing structure, which includes a warehousing structure, offices and a showroom. I would accept based on the information on file that there is an existing business operating out of the warehouse structure on site and such is being used for the storage of equipment associated with McSports' sales and distribution business that is operated from a location in close proximity (650m away) to the site (Robinhood Industrial Estate). I would acknowledge that the planning history of the site does identify that this structure is previously authorised for warehousing use. In this regard the exclusion under Section 653B(ii) may apply, however the definition of vacant and idle land refers to use that is not unauthorised. As noted above the use appears to be carried out in a structure, which was previously authorised for warehousing.
- 7.3. The appellants indicate that an existing business, McSport is operating on site and that this use is not an unauthorised use. On this basis it is argued that the site is not eligible for inclusion on the map despite being land referred to under Section 653B(a)(ii), as the site is not vacant or idle as per Section 653B(ii). 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 In relation to the existing structure on site, the planning history from 1978 and 1980 (0194/78 and 3047/80) appears to relate to the use of a building as a storage facility in connection with a motor parts business. It is argued that the change of use to storage associated with an online sports retail business is not a material change of use or is permitted under Article 10, Class 5 of part 4 of Schedule 2 of the 2001 Regulations which refer to use as a wholesale warehouse or as a repository.
- 7.5 The applicants Statement of Grounds in relation to their JR in relation to these lands provide details regarding the nature of the business and states that this information is provided with the appeal submission for this case. Para 28 notes that the trade currently operating from the warehouse involves a 6-step distribution process including receiving, conveying, storage, picking, shipping and return of products and that the warehouse on the subject site facilitates the first 4 steps. It also notes that

the final 2 steps mainly occur at another premises however at peak times the 5th step on the process – shipping is handled from the site. It states that the warehouse provides 66% of the overall trading process and at peak periods it provides 83% of the process - therefore it is reasonable to conclude that the key element of Mc Sports trade – namely the storage and distribution of sports equipment is carried out from the site.

7.6 In this case it would appear from their own information (Statement of Grounds in relation to the JR provided with the appeal submission) that the nature of the business is more evolved than just a warehouse for storage and that it is utilised for the distribution of goods as well. In this regard, it is a material change of use from the originally permitted warehouse for which permission has not been sought and further, it is a business that is more than a wholesale warehouse due to the significant element of distribution. In this regard it has not been demonstrated that the use ongoing is an authorised use and therefore fails to meet the criteria for exclusion under Section 653B(ii).

7.7 In addition to the failure to demonstrate that the ongoing use is an authorised use, I would highlight the planning history of this site. The lands in question were part of a larger former use on this subject site and the adjacent site to the east/northeast. The adjacent lands to the east/northeast are subject to a separate RZLT determination that is being appealed under ACP-323328-25. This site and the adjoining site were formerly in use by Nissan. The appellant provides Appendix 1, which shows the full extent of the Nissan operation and a breakdown of the structures and their operational nature. This includes the buildings on the appeal site, the open hardstanding area that makes up the other site subject to ACP-323328-25 and a number of structures further north at the junction of Walkinstown Avenue and Naas Road. Based on the information on this file the former and authorised use of this complex was for a singular operation, which was importation of motor and light industrial vehicles (and parts) for distribution. The structure on site is the Parts and Accessories building. From examining the planning history, permission was granted for a change of use of the lands in question and associated structures under ref no. Ref. 3569/09 in 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. This

permission was implemented and operated between 2010-2014. After this the lands in question and associated structures were used as car sales showroom by Windsor Motors Nissan before a period of vacancy. McSport have been operating in the existing structure on site, and it is claimed by the appellants that this is an authorised use based on previous permissions on site relating to warehousing use (ref no. 3677/05).

7.8 I acknowledge that the current business operating on site may be operating from a structure that has previously been used for warehousing historically, however the planning history of the site shows that there has been a material change of use of the site and associated structures under ref no. 3569/09 to recreation use, modifications to building incorporating new roller skating rink, café, offices, children's fitness centre, which was implemented on site. I would note since this operation ceased the premises was used for car sales and servicing, which was not subject to a grant of permission. After this operation ceased it was vacant for a period before the current use. There is no evidence of any enforcement action being taken in relation to the current use on site.

7.9 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 an existing structure on site is being used for warehousing and distribution in connection with a business, whose main operation is elsewhere in the area. The use may be using an existing warehouse structure, however based on the planning history a material change of use took place with a permission granted for a recreational use on this premises (Ref. 3569/09). This permission was implemented and operated for a number of years. On this basis it appears that warehousing use was superseded by a recreational use and reversion to such use without permission would not be exempted development. I would refer to per Part 2, Section 10(1)(d) of the Planning and Development regulations, 20001 (as amended) in this regard.

7.10 Part 2, S.10(1) Planning and Development Regulations, 20001 (as amended)

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

- 7.11 In this case the entire site subject to this appeal and the structures on such were subject to a change of use to under ref no. 3569/09 to recreation use, modifications to building incorporating new roller skating rink, café, offices, children's fitness centre, which was implemented on site. I am not satisfied that the appellants have demonstrated to a sufficient degree that the existing warehousing and distribution business on site is an authorised use, which would be required under the meaning of the 2000 Act. This current use however has no planning history, with no record of permission granted as highlighted by the Local Authority and the appellants have not demonstrated that such is an authorised use under the meaning of the Act of 2000. In this regard I would consider that the lands are vacant and idle under the definition of Section 653A and that they do not qualify for an exclusion under Section 653B(ii).
- 7.12 The second argument presented by the appellant refers to that 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. I do not accept the appellants argument that the lands in question does not meet the criteria under Section 653B(b) as I consider that these lands 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. In relation to the Uisce Eireann response to the RZLT submission, I am satisfied that in case of wastewater that capacity is available

and in terms of water supply there is capacity although the status is amber with this status relating to the whole of the Greater Dublin Area.

- 7.13 In relation to the statement 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, I do not consider this reaches the threshold for considering that the lands may not have access or be connected to public infrastructure. 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. This permitted development includes the entirety of the lands in this case. This permission granted in April 2021 is a 10-year permission. It is reasonable to conclude that the applicant 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.
- 7.14 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 appellant argues 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 land holding 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. 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 the lands identified as Parcel ID DCC000064293 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

- 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 identified as Land Parcel ID DCC000064293 are located on Z14 'Strategic Development and Regeneration Areas (SDRA)' zoned lands identified within the current Dublin City Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. It is acknowledged that there is an existing business operating from a building on site, however having regard to the fact that it has not been demonstrated that this use is an authorised use, with no history of any permission being granted for such and a material change of use of existing structure on site to a recreational use having been authorised and implemented and being the last authorised development on site, the site falls within the definition of 'vacant or idle' and on this basis does not fall out of the scope of Section 653B. The existing use is also for warehouse and distribution use which does not accord with the original use of the structure solely for warehousing. The lands are located within an established urban area with services available, 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 Z14 'Strategic Development and Regeneration Areas (SDRA)' zoning objective that applies to these lands. 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-000277

Appeal by O'Flynn Construction 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 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 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 Land Parcel ID DCC000064293 are located on Z14 'Strategic Development and Regeneration Areas (SDRA)' zoned lands identified within the Dublin City Development Plan 2022-2028 are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. It is acknowledged that there is an existing business operating from a building on site, however having regard to the fact that it has not been demonstrated that this use is an authorised use, with no history of any permission being granted for such and a material change of use of existing structure on site to a recreational use having been authorised and implemented and being the last authorised development on site, the site falls within the definition of 'vacant or idle' and on this basis does not fall out of the scope of Section 653B. The existing use is also for warehouse and distribution use which does not accord with the original use of the structure solely for warehousing. The lands are located within an established urban area with services available, 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 Z14 'Strategic Development and Regeneration Areas (SDRA)' zoning objective that applies to these lands. 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