



67TACD2021

Between/

[REDACTED]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeals Commission as an appeal against an Amended Notice of Assessment to Capital Gains Tax (hereinafter “**CGT**”) for the year 2013, raised by the Respondent on the Appellant on the 2nd of March 2017.

B. Facts relevant to the Appeal

2. The material facts of the case are not in issue and are agreed by both Parties and are set forth hereunder.
3. The Appellant is a farmer who owned lands on the route of the [REDACTED] Bypass, Co. [REDACTED] which subsequently formed part of the M [REDACTED] motorway between [REDACTED] and [REDACTED] in the County of [REDACTED].
4. The Appellant received a letter dated the 29th of February 2008 from the National Roads Liaison Office of [REDACTED] County Council entitled:

*“Re: [REDACTED] Bypass Project
Topographical Survey Contract”*
5. The letter notified the Appellant that a Topographical Survey of his lands would commence the following week. The letter further stated that this survey would consist of teams of one or two people walking the lands to be surveyed. These teams would, the letter stated, be using survey instruments that take measurements of the level and position of features and that the surveys would be non-invasive. In addition, the Appellant was notified that it would be necessary to temporarily move any animals off the lands being surveyed while the survey was being undertaken.
6. The Appellant received a further letter dated the 18th of June 2008 from the National Roads Liaison Office of [REDACTED] County Council entitled:

“Re: [REDACTED] to [REDACTED] Road Project”



7. This letter notified the Appellant that it was necessary to undertake ground investigation works on parts of his lands and enclosed a map of locations of trial pits, boreholes and rotary core holes, duplicate Forms of Agreement and Consent to the works, along with an explanatory sheet giving a description of typical ground investigation work. The letter further went on to state that there would be an additional payment to landowners in circumstances where some of the boreholes would be used for additional testing of water levels over a period of time.
8. The Appellant received a further letter dated the 19th of June 2008 from the National Roads Liaison Office of [REDACTED] County Council entitled:
- “Re: [REDACTED] Project
(incorporating [REDACTED] Bypass)
[REDACTED] Survey & [REDACTED] Survey”*
9. The letter notified the Appellant that, as part of an assessment of the flooding potential in the [REDACTED] and the [REDACTED], it had become necessary to undertake a further topographical study and that land surveyors would commence this survey the following week.
10. The Appellant gave evidence that representatives of [REDACTED] County Council attended on his lands on various occasions in 2008 in accordance with the foregoing correspondence and archaeological works were carried out on his lands in mid-2010.
11. The Appellant received payments totalling €19,374.00 from [REDACTED] County Council in relation to entrances upon his lands for the purposes of the above mentioned survey works. The payments were comprised as follows:-
- a. 18th of February 2009 €2,932.00
 - b. 5th of March 2009 € 308.00



- | | |
|--------------------------------------|-----------|
| c. 12 th of May 2010 | €5,556.00 |
| d. 20 th of July 2010 | € 745.00 |
| e. 1 st of September 2010 | €9,833.00 |

12. The aforesaid payments were returned by the Appellant as income in his Form 11 returns for 2009 and 2010.

13. On the [REDACTED] 2010, An Bord Pleanála approved the “[REDACTED] [REDACTED] County Council Motorway Order No. [REDACTED] thereby authorising [REDACTED] County Council to compulsorily purchase the lands detailed in the Schedule to the Order. Lands belonging to the Appellant were among the lands listed in the said Schedule.

14. On the 15th of October 2010, [REDACTED] County Council served a Notice to Treat on the Appellant in relation to his lands and called upon him to **(a)** state the exact nature of his interest in the lands, and **(b)** give details of the compensation he claimed for his interest in the lands.

15. Compensation for the compulsory purchase of the Appellant’s lands was informally agreed between the Appellant and [REDACTED] County Council on the 21st of December 2012 and a formal agreement was entered into by the Appellant at a later date. In 2013, compensation of €202,632 was paid to the Appellant as compensation for the compulsory acquisition of his lands.

16. The Appellant duly made his Form 11 return to the Respondent for 2013 and in the section entitled “*CGT Self-Assessment*” therein submitted the following calculation of CGT payable:-



(i) Amount of chargeable gains arising for this period:	€201,362
(ii) Amount of tax chargeable for this period:	€40,272
(iii) Amount of tax payable for this period:	€40,272
(iv) Amount of any surcharge due under s.1084 TCA1997 because of:	
• late filing of this return, or	€0
• non-compliance with your LPT requirements	€0
(v) Amount of tax paid directly to the Collector General for this period:	€0
(vi)(a) Balance of Tax Payable for this period:	€0

17. The calculation made by the Appellant represented a liability to CGT based on a CGT rate of 20% on the disposed asset, which was the applicable CGT rate up to and including the 14th of October 2008.

18. A historic review of CGT rates in the State reveals that the following rates applied for the following periods:-

Date of Disposal of Asset	CGT rate applicable
Up to and including 14 th of October 2008	20%
15 th of October 2008 – 7 th of April 2009	22%
8 th of April 2009 – 6 th of December 2011	25%
7 th of December 2011 – 5 th of December 2012	30%
6 th of December 2012 – date	33%

19. The Respondent raised a Notice of Amended Assessment to CGT on the 2nd of March 2017. The said Notice of Amended Assessment set out the following:-

Rate of Tax	15%	20%	33%	40%	Total €
Amount of chargeable gains arising in this period					202,632.00
Less: Allowable Losses					0.00
Less: Amount not chargeable – Section 601 TCA1997					1,270.00
Net amount chargeable to tax	0.00	0.00	201,632.00	0.00	201,362.00
Amount of tax chargeable for this period	0.00	0.00	66,449.00	0.00	66,440.00

20. The Respondent raised the amended Notice of Assessment to CGT on the basis of an applicable CGT rate of 33%, which is the applicable rate for disposals from the 6th of December 2012 onwards.

21. The Appellant has appealed the amended Notice of Assessment to CGT on the basis that he contends the applicable rate of CGT is 20%, which is the rate which was applicable on disposals up to the 14th of October 2008.

22. The amount of money under appeal is €26,168.

C. Relevant Legislation



23.Section 542 of the Taxes Consolidation Act, 1997 (hereinafter “**TCA1997**”) provides as follows:-

(1) (a) *Subject to paragraph (b) and subsection (2), for the purposes of the Capital Gains Tax Acts, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made shall be the time at which the contract is made (and not, if different, the time at which the asset is conveyed or transferred).*

(b) *Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied.*

(c) *For the purposes of the Capital Gains Tax Acts, where an interest in land is acquired, otherwise than under a contract, by an authority possessing compulsory purchase powers, the time at which the disposal and acquisition is made shall be the time at which the compensation for the acquisition is agreed or otherwise determined (variations on appeal being disregarded for this purpose) or, if earlier, the time at which the authority enters on the land in pursuance of its powers.*

(d) *Notwithstanding paragraph (c), for the purposes of the Capital Gains Tax Acts, where a person makes a disposal of land to an authority possessing compulsory purchase powers, and the disposal would not have been made but for the exercise of those powers or the giving by the authority of formal notice of its*



intention to exercise those powers, then the chargeable gain (if any) on the disposal shall be deemed to accrue—

(i) on the day on which the payment of the compensation amount is received by the person making the disposal, or

(ii) at a time immediately before the person's death if the consideration has not been received at the date of his or her death.

(2) For the purposes of subparagraphs (i) to (iv) of section 535(2)(a), the time of disposal shall be the time at which any capital sum is received.

24. Section 212(1) of the Planning and Development Act 2000 (hereinafter “**PDA 2000**”) provides as follows:-

(1) A planning authority may develop or secure or facilitate the development of land and, in particular and without prejudice to the generality of the foregoing, may do one or more of the following:

(a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving;

(b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct;

(c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development;



(d) provide, secure or facilitate the provision of areas of convenient shape and size for development;

(e) secure, facilitate or carry out the development and renewal of areas in need of physical, social or economic regeneration and provide open spaces and other public amenities;

(f) secure the preservation of any view or prospect, any protected structure or other structure, any architectural conservation area or natural physical feature, any trees or woodlands or any site of archaeological, geological, historical, scientific or ecological interest.

25.Section 212(4) of PDA 2000 provides that:-

(4) A planning authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.

26.The relevant portions of section 213 of PDA 2000 provide as follows:-

- (1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.*
- (2) (a) A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other*



enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94, do all or any of the following:

(i) acquire land, permanently or temporarily, by agreement or compulsorily,

(ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

(iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an "acquisition of land".

...

(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required by the authority for that purpose in the future.

(b) The acquisition may be effected by agreement in respect of any land which, in the opinion of the local authority, it will require in the future for the purposes of any of its functions notwithstanding



that the authority has not determined the manner in which or the purpose for which it will use the land.

(c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act...”

27.Section 215(1) of PDA 2000 provides that:-

(1) The functions of the Minister in relation to a scheme or proposed road development under sections 49, 50 and 51 of the Roads Act, 1993, are hereby transferred to and vested in the Board [i.e. An Bord Pleanála] and relevant references in that Act to the Minister shall be construed as references to the Board and any connected references shall be construed accordingly, except that any powers under those sections to make regulations or to prescribe any matter shall remain with the Minister.

28.Section 217(6) of PDA 2000 provides that:-

(6) Notwithstanding section 123 of the Lands Clauses Consolidation Act, 1845, where a compulsory purchase order or provisional order is confirmed by a local authority or the Board and becomes operative and the local authority decides to acquire land to which the order relates, the local authority shall serve any notice required under any enactment to be served in order to treat for the purchase of the several interests in the land (including under section 79 of the Housing Act, 1966) within 18 months of the order becoming operative.

29.The relevant provisions of section 49 of the Roads Act 1993, as amended, provide that:-



(1) A road authority or the Authority shall submit any scheme made by it under section 47 [which confers the power to make schemes for, inter alia, motorways] to the Minister for its approval.

...

(3) The Minister may, by order, approve a scheme with or without modifications or he may refuse to approve such a scheme and shall publish in one or more newspapers circulating in the area where the proposed motorway, busway, protected road or service area is to be located notice of his decision, including, where appropriate, particulars of any modifications to the scheme.

30. Section 52(1) of the Roads Act 1993 as amended provides that:-

(1) Whenever the Minister approves a scheme (with or without modifications) under section 49, the road authority shall thereupon be authorised to compulsorily acquire any land or any substratum of land or any rights in relation to land specified in the approved scheme and, for that purpose, the scheme shall have the same effect as if it were a compulsory purchase order in respect of that land or substratum of land or any rights in relation to land which, consequent on a decision made by the road authority, pursuant to section 10 (1) of the Local Government (No. 2) Act, 1960 (as inserted by section 86 of the Housing Act, 1966), had been duly made and confirmed.

D. Submissions of the Appellant



31. The Appellant relies on section 542(1)(c) of TCA 1997 in support of his appeal.
32. The Appellant submits that what is critical to this appeal is a determination of the time at which the disposal of the Appellant's lands took place. In particular, the Appellant contends that what is in dispute is the time the [REDACTED] County Council entered on his lands in pursuance of its powers, as that is the date which determines the rate of CGT to be applied to his disposal of the lands.
33. The Appellant submits that the entries on to his lands by [REDACTED] County Council referred to at paragraphs 4 to 10 *supra* were entries on to his lands pursuant to the Council's powers within the meaning of section 542(1)(c).
34. The Appellant further submits that, in order to make the necessary determination as to which rate of CGT is applicable to the disposal of his lands, is it necessary to analyse two phrases contained within section 542(1)(c), namely "*an authority possessing compulsory purchase powers*" and "*the time at which the authority enters on the land in pursuance of its powers*".
35. In relation to the question of the possession of compulsory purchase powers, the Appellant submits that [REDACTED] County Council is an authority possessing compulsory purchase powers. In support of that position the Appellant refers to section 212(4) of PDA 2000 which, as stated above, provides that:-
- A planning authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.*



36. The Appellant submits that section 212(4) of PDA 2000 confirms that a planning authority, unlike any other entity, may use any of its powers for the purposes of compulsory acquisitions of land. In addition, he submits that the corollary is that local authorities possess compulsory purchase powers generally.
37. In relation to the time at which the authority entered on his lands in pursuance of its powers, the Appellant submits that the letters written by [REDACTED] County Council in February 2008, June 2009 and June 2009, along with the attendance of archaeologists on his lands in 2010, are evidence of the planning authority having entered the lands in pursuance of its compulsory purchase powers pursuant to section 212(4).
38. In further support of his position, the Appellant relied upon Part 19-01-15 of the Respondent's Tax and Duty Manual, which relates to time of disposal and acquisition, and also to Revenue eBrief 86/09.

E. Submissions of the Respondent

39. The Respondent submits that only an entry on to land by a planning authority (in this instance, [REDACTED] County Council) in pursuance of its compulsory purchase powers in the context of a particular scheme can be considered to be relevant to the time of disposal and acquisition for the purposes of section 542(1)(c) of TCA 1997.
40. The Respondent further submits that any entry by [REDACTED] County Council on foot of any other powers which it may possess is of no relevance to the ascertainment of the time of disposal and acquisition for the purposes of section 542(1)(c).



- 41.** The Respondent submits that, while it is clear that, pursuant to section 212 and 213 of PDA 2000, local authorities do have power generally to acquire land compulsorily, the provisions of section 542(1)(c) relate to each specific instance of land being compulsorily acquired, and that each case will turn on its own facts.
- 42.** The Respondent submits that in circumstances where the motorway scheme was approved by An Bord Pleanála on the [REDACTED] 2010, and where the Appellant was subsequently served with a Notice to Treat dated the 15th of October 2010, the entries on to the Appellant's land at any stage prior to the date of the Notice to Treat could not constitute entry on the land in pursuance of [REDACTED] County Council's compulsory purchase powers as referred to in section 542(1)(c).
- 43.** The Respondent further submits that on a proper interpretation of section 542(1)(c), [REDACTED] County Council could only have entered on to the lands in pursuance of the powers inherent in the particular compulsory purchase scheme approved by An Bord Pleanála in [REDACTED] 2010, and that [REDACTED] County Council could not have acquired "*an interest on the land*" within the meaning of section 542(1)(c) on foot of its compulsory purchase powers until after the compulsory purchase order was made and confirmed by An Bord Pleanála and the Notice to Treat was issued.
- 44.** In support of its aforesaid arguments, the Respondent submitted that the stages of the compulsory acquisition process are as follows:-
- i. A referencing procedure which involves identifying the lands and rights and interests over the lands along with the occupiers and owners of the lands;
 - ii. Notification to the public and individual landowners of the scheme and the actual making of the compulsory purchase order;
 - iii. Confirmation or rejection of the scheme by An Bord Pleanála; and,



- iv. Decision of the acquiring authority to acquire the land to which the CPO relates and the related compensation process. The acquiring authority is given 18 months to serve a Notice to Treat and the date of service of the Notice to Treat fixes the date for the assessment of compensation and the interest in the lands to be acquired. Once the Notice to Treat has been served, the acquiring authority may take possession of the land without the consent of the landowner.

45. The Respondent submits that when [REDACTED] County Council entered on the lands between 2008 and 2010, it did not do so on foot of its compulsory purchase powers in relation to the motorway scheme but instead did so on foot of other powers it holds, namely:

- i. Section 78 of the Roads Act 1993;
- ii. Section 13 of the Local Government (No 2) Act 1960;
- iii. Section 84 of the Land Clauses Consolidation Act of 1845; and,
- iv. Section 80(1) of the Housing Act 1966.

46. The Respondent also submitted and made reference to the following cases which, it submitted, confirm the distinctions between the various stages involved in the compulsory acquisition of land, namely:-

- i. ***In re Green Dale Building Company Limited* [1977] IR 256;**
- ii. ***Porstmouth Arms Hotel Ltd -v- Enniscorthy UDC*** unreported High Court, 14th of October 1994;
- iii. ***Coras Iompair Eireann and Iarnrod Eireann -v- Cork County Council and An Bord Pleanala* [2009] IEHC 262.**



F. Analysis and Findings

47. The parties are agreed on the relevant facts necessary for me to determine this appeal. The findings of material fact I have reached on the evidence before me are those detailed in paragraphs 3 to 22 inclusive *supra*.

48. I agree with the Appellant's submission that the key issue in this appeal is the proper interpretation of two phrases contained in section 542(1)(c) of TCA 1997, namely **(a)** "*an authority possessing compulsory purchase powers*" and **(b)** "*the time at which the authority enters on the land in pursuance of its powers*".

49. I believe that the correct approach to the interpretation of taxing statutes generally, and in particular to the correct interpretation of section 542(1)(c) in the instant appeal, was clearly and concisely stated by McKechnie J in the Supreme Court decision in ***Dunnes Stores -v- The Revenue Commissioners [2019] IESC 50***, wherein he stated as follows in paragraphs 63 to 65:-

"As has been said time and time again, the focus of all interpretive exercises is to find out what the legislature meant: or as it is put, what is the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail. "The words themselves alone do in such cases best declare the intention of the lawmaker" (Craies on Statutory Interpretation, 7th ed., Sweet & Maxwell, 1971 at pg. 71). In conducting this approach "... it is natural to enquire what is the subject matter with respect to which they are used and the object in view" – Direct United States Cable Company -v- Anglo-American Telegraph Company [1877] 2 App. Cas. 394. Such will inform the meaning of the words, phrases or provisions in question – McCann Limited -v- O'Culachain (Inspector of Taxes) [1986] 1 I.R.



196, per McCarthy J at 201. Therefore, even with this approach, context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that.

Where however the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as to their existence, their scope and their application. It can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case, one particular rule rather than another has been applied, and why in a similar case the opposite is also occurred. Aside from this however, the aim, even when invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.

When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of construction: one of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker.”

50. I note that the foregoing passage was cited with approval by O'Donnell J giving the Supreme Court decision in ***Bookfinders Ltd. -v- The Revenue Commissioners*** [2020] IESC 60, where, having found that section 5 of the Interpretation Act should not be applied in the interpretation of taxation statutes, he went on to state in paragraph 54 as follows:-

“However, the rest of the extract from the judgement [of McKechnie J] is clearly applicable and provides valuable guidance. It means, in my view, that it is a



mistake to come to a statute - even a taxation statute - seeking ambiguity. Rather, the purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the court is to seek to ascertain their meaning. The general principles of statutory interpretation are tools used to achieve a clear understanding of the statutory provision. It is only if, after the process has been concluded, a court is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text construed given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.”

51.Applying the foregoing principles, the first element which I must consider is whether [REDACTED] County Council is “an authority possessing compulsory purchase powers”.

52.Local authorities have been given general compulsory purchase powers by sections 212 and 213 of PDA 2000. Section 212(1) of PDA 2000 provides that a local authority “...may develop or secure or facilitate the development of land, and in particular and without prejudice to the generality of the foregoing, may ... (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct...”

53.Section 213(2)(a) of PDA 2000 provides that:-

“A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94 , do all or any of the following:



(i) *acquire land, permanently or temporarily, by agreement or compulsorily,*

...

and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an "acquisition of land".

54. I find the words quoted above to be plain and unambiguous and I am satisfied, that given their ordinary, basic and natural meaning, they establish clearly that [REDACTED] County Council is "*an authority possessing compulsory purchase powers*" within the meaning of section 542(1)(c).

55. It is therefore necessary to consider the second phrase, namely "*the time at which the authority enters on the land in pursuance of its powers*". It seems to me that the key element of this phrase for the purpose of determining this appeal is the words "*in pursuance of its powers*."

56. The first question to be considered when construing the phrase is, what are the powers referred to?

57. I believe that regard must be had to the entirety of the subsection when answering this, and I believe that the fact that the subsection only applies "*where an interest in land is acquired otherwise than under a contract, by an authority possessing compulsory purchase powers...*" is of key importance. Looking at the final phrase in the context of the subsection as a whole, I am satisfied that it is clear that the "*powers*" referred to can only be compulsory purchase powers, and not the general powers of the authority. I am satisfied that any other reading of the subsection would not only be illogical but could lead to manifestly absurd results.



58. The Appellant submits, correctly in my view, that [REDACTED] County Council has, as a local authority and a planning authority, a wide panoply of statutory powers which may be exercised in discharge of the functions which it is mandated to carry out.
59. I believe it is clear that [REDACTED] County Council is entitled by section 212(4) of PDA 2000 to use any of its powers, including its powers of compulsory acquisition, in relation to its development functions as described in section 212(1), and in particular to facilitate the assembly of sites to ensure the orderly development of land.
60. However, I believe that it does not follow from the foregoing statement that [REDACTED] County Council is entitled to use any of its powers for the purposes of the compulsory acquisition of land, as the Appellant contends. It is entitled to use any of its powers, of which its compulsory acquisition powers are but one aspect, to carry out its development functions; but section 212(4), in my view, stops short of allowing a planning authority to exercise any of its powers where the sole aim is the compulsory acquisition of land. The compulsory acquisition of land may be one element of a planning authority's scheme for the development of land, but an intention to compulsorily acquire land is not sufficient in and of itself to trigger an unlimited right for the planning authority to exercise any of its powers to secure or facilitate the compulsory acquisition.
61. Where a local authority wishes to exercise its compulsory purchase powers to acquire lands for the purposes of a motorway scheme, as is the case in the instant appeal, its power to do so is further constrained by the provisions of the Road Act 1993 as amended. In particular, the road authority must, having first complied with the requirements of section 48, submit the motorway scheme to An Bord Pleanála for approval pursuant to section 49.



62. As stated above, section 52(1) then provides that:-

Whenever the Minister [now An Bord Pleanála] approves a scheme (with or without modifications) under section 49, the road authority shall thereupon be authorised to compulsorily acquire any land or any rights in relation to land specified in the approved scheme...

63. I believe it is clear from the foregoing that it is only when An Bord Pleanála has approved a motorway scheme pursuant to section 49 that the road authority becomes authorised to exercise its compulsory acquisition powers to acquire lands for the purposes of the motorway scheme.

64. Applying the foregoing findings to the facts of this appeal, I am satisfied that it was only when An Bord Pleanála approved [REDACTED] County Council's motorway scheme on the [REDACTED] 2010 that [REDACTED] County Council became authorised to exercise its compulsory purchase powers in relation to the Appellant's lands.

65. Put another way, while I accept that [REDACTED] County Council does have a general right pursuant to sections 212 and 213 of PDA 2000 to compulsorily purchase land, its power to compulsorily acquire the Appellant's lands only became exercisable after the motorway scheme was approved by An Bord Pleanála on the [REDACTED] 2010.

66. Once [REDACTED] County Council had decided to exercise its power to compulsorily purchase the Appellant's lands for the purposes of the motorway scheme, it was obliged pursuant to section 217(6) of PDA 2000 to serve a Notice to Treat on the Appellant within 18 months of the scheme being operative pursuant to section 52(9) of the Roads Act 1993 as amended. As stated above, a Notice to Treat was duly served on the Appellant by [REDACTED] County Council on the 15th of October 2010.



67. I am satisfied, and accept as correct the legal submission of the Respondent, that it was only once a Notice to Treat had been served on the Appellant that ██████ County Council became entitled (for example, pursuant to section 80(1) of the Housing Act 1966) to enter upon the Appellant's lands in pursuance of its compulsory purchase powers. I believe this finding is confirmed by the decisions in ***Re Green Dale Building Company Limited*** and ***Coras Iompair Eireann and Iarnrod Eireann -v- Cork County Council and An Bord Pleanala***, cited *supra*.

68. Accordingly, I find that the various entries upon the Appellant's land by representatives of ██████ County Council between early 2008 and mid-2010 were not entries upon the land by the County Council in pursuance of its compulsory purchase powers within the meaning of section 542(1)(c) of TCA 1997.

69. It is well-established that the burden of proof is on the Appellant in tax appeals (see, *e.g.*, ***Menolly Homes -v- Appeal Commissioners [2010] IEHC 49*** at paragraph 20). No evidence has been adduced which suggests that ██████ County Council entered the Appellant's lands in pursuance of its compulsory purchase powers subsequent to the 15th of October 2010 which, as I have found above, is the earliest possible date such an entry could have been made.

70. I have already found as a material fact that the amount of compensation was agreed informally between the Appellant and ██████ County Council on the 21st of December, 2012 and thereafter a more formal agreement was entered into. Compensation in the amount of €202,632.00 was paid to the Appellant in 2013.

71. I therefore find that the time of the disposal of the Appellant's interest in the lands compulsorily acquired by ██████ Council was the 21st of December 2012, being the



date that compensation for the acquisition was agreed within the meaning of section 542(1)(c) of A 1997.

72.Section 649A(1) of TCA 1997 provides that the applicable rate of CGT in the case of a relevant disposal made on or after the 6th of December 2012 is 33%.

73.I am therefore satisfied that the amended Notice of Assessment to CGT raised by the Respondent on the 2nd day of March 2017 is correct.

G. Conclusion

74.For the reasons outlined above, I find that:-

- (a)** the earliest date on which [REDACTED] County Council could have entered upon the Appellant's lands in pursuance of its compulsory purchase powers within the meaning of section 542(1)(c) of TCA 1997 was the 15th of October 2010, being the date on which [REDACTED] County Council served a Notice to Treat on the Appellant;
- (b)** the various entries upon the Appellant's land by representatives of [REDACTED] County Council between early 2008 and mid-2010 were not entries upon the land by the County Council in pursuance of its compulsory purchase powers within the meaning of section 542(1)(c) of TCA 1997;
- (c)** there was no evidence of any entry upon the Appellant's land by [REDACTED] County Council in pursuance of its compulsory purchase powers subsequent to the 15th of October 2010;
- (d)** the time of the disposal of the Appellant's interest in the lands compulsorily acquired by [REDACTED] Council for CGT purposes was the 21st of December 2012, being the date that compensation for the acquisition was agreed; and,





(e) the applicable rate of CGT in the case of a relevant disposal made on or after the 6th of December 2012 is 33%.

75.I therefore refuse the Appellant's appeal and direct in accordance with section 949AK(1)(c) of the Taxes Consolidation Act 1997 that the Amended Notice of Assessment to Capital Gains Tax for the year 2013, raised by the Respondent on the Appellant on the 2nd of March 2017, stand.

MARK O'MAHONY
APPEAL COMMISSIONER
5th February 2021



