



An  
Bord  
Pleanála

## Inspector's Report ABP-316336-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Elmpark Green, Merrion Road, Dublin 4.
<b>Local Authority</b>	Dublin City Council.
<b>Local Authority Reg. Ref.</b>	RZLT 000020.
<b>Appellant</b>	The Davy Platform ICAV acting on behalf of its subfund Elm Real Estates Investments.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Description**

The lands subject to this appeal, identified as RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488), are located on the western side of Merrion Road and comprise a large residential and commercial development. The overall Elmpark development extends from Merrion Road (east boundary) to Elm Park Golf course (western boundary), St. Mary's Residential Care Centre to the north. The overall development includes 6 no. bocks (offices/apartments and creche) and a 2 storey leisure block.

The local authority Determination refers to 3 separate parcels. The Parcels are labelled as per the parcels identified in the appellant's submission on the Draft map to the local authority. My assessment below follows this labelling.

## **2.0 Zoning**

Dublin City Development Plan 2022-2028 is the operative Plan.

Parcel 1 refers to the portion of lands zoned Z1 'Sustainable Residential Neighbourhoods'. Residential is a permissible use under this land use zoning objective.

Parcel 2 refers to the portion of lands zoned Z2 'Residential Neighbourhoods (Conservation Areas)'. Residential is a permissible use under this land use zoning objective.

Parcel 3 refers to the portion of lands assessed by the local authority following a submission on the Draft map. These lands are zoned Z6 'Employment/Enterprise. Parcel 3 was excluded in the Notification of Determination issued by the local authority.

Lands are located in close proximity to the Zone of Archaeological Interest comprising RMP DU023-001 and RMP D023-053.

## **3.0 Planning History**

Extensive planning history associated with the overall Elmpark development.

Applications of note include:

PA Ref. 1539/20 (ABP Ref. PL.29S.201622) refers to a grant of permission for a mixed use development containing office, hotel, apartments, accommodation for the elderly, private hospital, leisure centre, restaurant and creche.

PA Ref. 3743/19 (ABP Ref. 307424-20) refers to a grant of permission for a residential development.

PA Ref. 3389/21 refers to amendments to PA Ref. 3743/19 (ABP Ref. 307424-20).

PA Ref. 2074/12 refers to a grant of permission to refurbishment to existing dwelling and change of use to neighbourhood restaurant (unit no. 205).

PA Ref. 4131/22 refers to a decision to refuse permission for inter alia alterations to unit 205, outdoor seating area, changes to opening hours.

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

The appellants made a submission to the local authority seeking to have their lands removed from the draft map on the basis that Parcel 1 contains a residential development which is operational and occupied and the portion of the site which is not occupied by existing buildings is required for open space and/or recreation purposes. Parcel 2 is occupied by a business premises and is therefore exempt from RZLT. Parcel 3 has a Z6 zoning objective where residential uses are not permissible.

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

Determination (split):

Determination Part 1: Parcel 1 and Parcel 2 as per submission map:

Dublin City Council determined to include these lands on the final map on the basis that the site constitutes land satisfying the relevant criteria as set out in Section 653B of the Act.

Reasons:

The lands satisfy section 653B of the Taxes Consolidation Act 1997, as amended, as the lands are zoned solely or primarily for residential use, are suitably serviced having access to public infrastructure and facilities with sufficient service capacity, Parcel 1 lands have been developed for apartments with open space and Parcel 2 lands are permitted commercial use however are not liable to commercial rates and meet other qualifying criteria in section 653B of the Taxes Consolidation Act 1997, as amended.

Determination Part 2: parcel 3 as per submission map:

Dublin City Council has evaluated the submission received in relation to the above site and has determined to exclude the above mentioned lands from the final map on the basis that the site does not constitute land satisfying the relevant criteria as set out in section 653B of the Act.

Reason:

The lands do not satisfy section 653B of the Taxes Consolidation Act 1997, as amended, as Parcel 3 is zoned Z6 'Employment /Enterprise' and therefore does not meet the criteria in section 653B (a)(i) and (a)(ii) of the Taxes Consolidation Act.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal are summarised as follows:

- Parcel 1 is occupied by an existing and operational development which is part of the wider Elmpark complex.
- Query if RZLT applies to apartments as legislation is silent on their assessment.
- Open space for the benefit of residents should be excluded.
- Parcel 2 is occupied by a business that is authorised, liable for commercial rates, provides services to residents of adjacent residential areas and is in use as a café/restaurant/gourmet shop.

- Parcel 3 excluded as land use zoning Z6.

## 7.0 Assessment

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map 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. Land identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 are zoned Z1 Sustainable Residential Neighbourhood. Lands identified as Parcel 2 are zoned Z2 Residential Neighbourhood (Conservation Areas) and therefore within scope of section 653B(a). The appeal refers to Parcel 3 which was excluded by DCC in its Notice of Determination as refers to lands zoned under land use objective Z6 where residential is not permissible. This remains unchanged and lands identified as Parcel 3 are considered out of scope of section 653B(a).

The grounds of appeal set out that the lands identified as Parcel 1 should be excluded as it relates to occupied apartments and associated open space. Furthermore it is queried if the tax and legislation apply to apartments as it is mute on this point.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets out that ' a number of exemptions are also set out within the provision, and while existing permanently - occupied residential dwellings will be indicated on the maps where located within a residential zoning, homes are not within the scope of the tax and the owners of such properties will not be liable for this tax.'

Section 3.1.1 of the guidelines includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that *"Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however homeowners of*

*residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation).*

Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. The legislation does not give the board a role in determining whether a site is a 'relevant site' by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. 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 the restrictions to considering criteria for inclusion. This states 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"*.

Whether the site complies section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

Parcel 1 contains open space associated with the overall development does not have a specific objective attached that restricts use for recreational purposes. I note that the open space serves the apartments and in this sense is ancillary to the overall development. As set out above An Bord Pleanála is restricted to assessing compliance with section 653B and whether a site is 'relevant' is beyond the scope of this report.

Overall I am of the view that is reasonable to conclude that lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 have access to public infrastructure and utilities, including roads and footpaths as such complies with other criteria for inclusion under section 653B(b).

The grounds of appeal have not raised matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the lands identified as Land identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 from the final map.

With regard to the lands identified as Parcel 2. This refers to No. 205 Llandaff Terrace which was the subject of PA Ref. 2074/12 for a change of use from dwelling to commercial (Neighbourhood restaurant). Elm Epicurian (café/restaurant/gourmet shop) operates from the premises. The appellants have stated that the business is liable for commercial rates payable to DCC. Details from the Valuation office website have been submitted in support of this which show the property number and rateable valuation.

Page 11 of the 2022 RZLT Guidelines that *'land which is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates'*. The planning authority determined the lands are included on the Draft map as the lands are not liable to commercial rates.

On the basis of the information submitted I am of the view that the lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) Parcel 2 provide a service to the existing or future community, is an authorised use, is a premises in use by a trade or profession and is liable to commercial rates. On this basis I am satisfied that the lands meet the criteria for exclusion set out in section 653B(c)(i) and the grounds of appeal should be upheld in this regard.

## **8.0 Conclusion & Recommendation**

The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 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. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. The lands meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 on the final map.

The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 2 should be excluded from the final map under the provision of section 653B(c)(i) as it provides a service to the existing or future community, is an authorised use, is a premises in use by a trade or profession and is liable to commercial rates. I recommend that the board cancel the determination of the local authority relating to the lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 2 and direct the local authority to remove this portion of the lands from the final map.

The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 3 are not in scope of section 653B(a) and I recommend that the Board confirm this portion of the local authority Split Determination to remove the lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 3 from the final map.

## **9.0 Reasons and Considerations**

Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.



The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 1 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the final map.

The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 2 should be excluded from the final map under the provision of section 653B(c)(i).

The lands identified under RZLT 000020 (Parcel ID DCC000002681 & Parcel ID DCC000003488) as Parcel 3 are not in scope of section 653B(a).

*I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.*

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Dáire McDevitt  
Senior Planning Inspector

23<sup>rd</sup> August 2023