



An
Bord
Pleanála

Inspector's Report ABP-316365-23.

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

Location

No. 39-43 Merrion Square East,
Dublin 2.

Local Authority

Dublin City Council.

Local Authority Reg. Ref.

RZLT 000053.

Appellant

Le Favre Merrion Holdings Ltd.

Inspector

Dáire McDevitt.

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000053 (Parcel ID DCC000001770/1), refers to no. 39-43 Merrion Square East, Dublin 2. The lands comprise 5 no. protected structures which front onto Merrion Square. The eastern portion of the lands address Stephens Place which generally comprises of a single storey office block and ESB transformer.

2.0 Zoning

The lands are zoned Z1 Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2022-2028. Residential is a permissible use under this land use zoning objective.

3.0 Planning History

PA. Ref. 3067/21 refers to a grant of permission for demolition of structures on site and construction of a mixed use development.

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 residential development on the site has been delayed by the presence of an ESB transformer. The transformer would need to be removed to implement existing planning permission Reg. Ref. 3067/21.

5.0 Determination by the Local Authority

The local authority determined that the site should be included on the final map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

Reason:

The lands:

- Are zoned solely or primarily for residential use.
- Have access, or can be connected, to public infrastructure and facilities as evidenced by planning permission for a mixed use development on the lands under Reeg. Ref. 3067/21.
- Do not qualify for an exemption under sec.653B of the T&C Act as amended,
- Satisfy the other relevant qualifying criteria in section 653B of the TC Act as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The site cannot be connected to necessary enabling infrastructure in advance of the removal of existing ESB infrastructure from the site. The final cost and timeline involved with the removal of this existing ESB infrastructure presents a significant challenge to the appellant in the context of the financial value of the redeveloped site.

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. The appeal lands are zoned Z1 Sustainable Residential Neighbourhood and therefore within scope of section 653B(a).

The grounds of appeal set out that the lands should be excluded as the site cannot be connected to necessary enabling infrastructure in advance of the removal of existing ESB infrastructure from the site. The final cost and timeline involved with the removal of this existing ESB infrastructure presents a significant challenge to the appellant in the context of the financial value of the redeveloped site.

I note that the grounds of appeal include a copy of payment request from the ESB which is referred to as 'ESB Capital Contribution Invoice'. The local authority determined that the lands are in scope. I note there is an extant planning permission under PA Ref. 3067/21 for a mixed use development on the lands. The principle of the ESB transformer being relocated is not disputed by the appellants. Their submission refers to the cost of same.

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 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"*.

Based on the information provided and available I do not consider that the lands should be scoped out the grounds of potential ESB requirements for the removal of the transformer. Furthermore I note that there is an extant grant of planning permission for a mixed use development on these lands.

With regard to the provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting and water/foul connections may be provided where land is in the control of the landowner or local authority. Overall I am of the view that is reasonable to conclude that the site may have access to public infrastructure and utilities, including roads and footpaths as such complies with 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 RZLT 000053 (Land Parcel ID DCC000001770/1 from the map.

8.0 Conclusion & Recommendation

The grounds of appeal have not raised matters under section 653B that would warrant the exclusion of the lands from the final RZLT map. Having regard to the foregoing I consider that the lands identified as RZLT 000053 (Land Parcel ID DCC000001770/1) 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 map.

I recommend that the Board confirm the determination of the Local Authority and that the indicated site be retained on the 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 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 from the map.

I confirm that the report represents my profession 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.

Dáire McDevitt
Senior Planning Inspector

21st August 2023