



An
Bord
Pleanála

Inspector's Report ABP-316384-23

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	23 Gardiner Street Upper, Dublin 1.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	RZLT-000066
Appellant(s)	Kabrel Limited
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The subject site located on the western side of Gardiner Street Upper and extending to Kelly's Row to the south west, contains a three storey over basement terraced Georgian building at No. 23 Gardiner Street Upper, Dublin 1. The building is used as a guesthouse.

2.0 Zoning and Other Provisions

- 2.1. The part of the site fronting onto Kelly's Row is zoned Z1 – Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2022-2028, and the area of the site fronting onto Gardiner Street Upper is located on lands zoned Z8 – Georgian Conservation Areas.
- 2.2. No. 23 Gardiner Street Upper is a Protected Structure in the Dublin City Development Plan 2022-2028 (RPS Ref. No. 3110 refers).
- 2.3. The site is not located within an architectural conservation area (ACA) or areas of archaeological importance and there is no indication that the site is contaminated.

3.0 Planning History

- 3.1. There are no recent, relevant, valid applications on this site.

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 draft map on the basis that the subject site contains a commercial premises liable for rates, and that it operates as a guesthouse which accommodates residents from adjoining areas and further afield. Furthermore, the draft map includes part of the rear garden of the property which is required for use by the property.

The appellant considers that the building, indicated to be in use as a guesthouse since before 1964, is exempted development, having regard to Section 39(4) of the Planning and Development Act 2000 as amended.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the site was in scope. The site is zoned for residential development, has access, or can be connected to public infrastructure and facilities as evidenced by its city centre location and the existing use on the lands. The site is subject to a statutory designation (protected structure) but development is not precluded on this basis.
- 5.2. The Planning Authority considered that the lands do not qualify for an exemption under Section 653B of the Taxes Consolidation Act 1997 as amended as there is unauthorised use on the lands and this use does not provide services to residents of adjacent residential areas. Furthermore, it is considered that the lands satisfy the other relevant criteria set out under Section 653B of the Taxes Consolidation Act as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- Accept that the site is suitably zoned for residential development.
- Accept that the site has access and can be connected to public infrastructure and facilities.
- Outbuildings and a shed at the rear of the site are in use by the appellant and are not accessible from Kelly's Row due to the location of a mews building at No. 10 Kelly's Row, which effectively prevents rear access to No. 23 Gardiner Street Upper.
- The land identified for inclusion on the RZLT map forms part of the rear garden of the property.
- There is an extant guesthouse use in operation on the site. As such it is open to adjacent residents and others to use the guesthouse.
- The guesthouse is liable for commercial rates.

6.2. **Planning Authority Response**

- No response on file.

7.0 **Assessment**

- 7.1. The comments raised in the appeal submission are noted. The part of the overall site identified for inclusion on the RZLT map is zoned for residential use and the Planning Authority determined that the site remain on the RZLT map.
- 7.2. The site is serviced / is serviceable by public water and foul drainage. In terms of rear access to No. 23 Gardiner Street Upper from Kelly's Row, the appellant has indicated this is not achievable having regard to the location of a mews building. However, no information has been provided in the appeal to suggest that this building is not within the appellant's ownership. Therefore, I consider that rear access to the site may be available.
- 7.3. While the business would appear to be liable for commercial rates, I do not accept that the guest house provides services to residents of adjacent areas. Therefore, I consider the site does not satisfy the criteria for exclusion from the map as set out in section 653B (c) (i) of the Taxes Consolidation Act 1997 as amended.
- 7.4. I therefore consider that the site should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development.

8.0 **Recommendation**

- 8.1. 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**

- 9.1. The appellant requested that their site be removed from the map on the basis that access to the site is restricted, that the guesthouse business is liable for commercial rates and that the lands are required for the existing commercial use on the site.
- 9.2. The site is 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

for residential purposes. The site does satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

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.

John Duffy
Planning Inspector

22nd August 2023