



An
Bord
Pleanála

Inspector's Report

ABP-316402-23

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 Map

Location

Lands located off the Greenhills Industrial Estate, Greenhills Road, Dublin 12.

Local Authority

South Dublin County Council

Local Authority Reg. Ref.

SD-C259-10

Appellant(s)

Tatver Properties Limited.

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The site is located on the south-east side of the R819 Regional Road (Greenhills Road), adjacent and to the immediate rear/ south-east of an established Lidl Supermarket.
- 1.2. The site, as defined by Land Parcel ID: SDAL00053244, has a stated site of 0.47 ha.

2.0 Zoning and other provisions

- 2.1. The site has the zoning objective REGEN ‘*To facilitate enterprise and/or residential-led regeneration subject to a development framework or plan for the area incorporating phasing and infrastructure delivery*’ in the South Dublin County Development Plan 2022-2028. The subject site is also located within the City Edge boundary, as set out in the City Edge Strategic Framework (August 2022). Residential use is a use which is Permitted in Principle on lands zoned objective REGEN.
- 2.2. The development plan Core Strategy states that REGEN zoned lands are to be developed to contribute to development plan housing targets, with increased capacity due to development of proposed high-capacity public transport projects. The following Core Strategy objectives apply to City Edge Regeneration Lands:

Policy CS2: City Edge Regeneration Lands

Deliver a development framework for the regeneration of the City Edge lands in conjunction with Dublin City Council which underpins the strategic aims of the National Planning Framework and Regional Spatial and Economic Strategy

CS2 Objective 1:

To prepare a Local Area Plan or other appropriate mechanism for the zoned Regeneration (REGEN) lands and other lands at Naas Road / Ballymount as defined by the City Edge Project boundary. The LAP or equivalent will commence in 2022 and provide a framework for the sequential and phased development of the lands, integrating sustainable transport, land use and blue and green infrastructure. The City Edge Strategic Framework will inform this Statutory Plan.

CS2 Objective 2:

To facilitate a co-ordinated approach and vision to any future sustainable development of the City Edge area in collaboration with Dublin City Council and all relevant stakeholders, including the local community and existing businesses having regard to their operational needs, and ensure that the needs of the existing and new community will be met, and the provision of necessary community and physical infrastructure is delivered in tandem with any new development.

2.3. There is an indicative road upgrade route shown along Greenhills Road to the North of the subject site.

2.4. The following text relates to the said indicative road link:

- *Name: Greenhill Road upgrade and links.*
- *Description: Upgrade of Greenhills Road from Airton Road to Walkinstown Roundabout with new links to Ballymount Avenue, Limekiln Road and Calmount Road for Bus Connects provisions and long-term residential communities.*
- *Function: To provide improved access to/between employment lands within Tallaght, Ballymount and Robinhood and to provide improved access to and from the Greenpark, Limekiln and Greenhills area and provide for Bus Connects provisions.*

3.0 Planning History

3.1. Relevant Planning History

3.2. SD23A/0071: Applicant: Tatver Properties Limited. Permission for a change of use from yard which is ancillary to an industrial storage building to recycling facility; provision of a recycling facility for the recycling of non-hazardous household and commercial waste; The development provides for the erection of a single storey payment booth, internal one-way road providing access to the site from existing entrance off Greenhills Road, provision of hardstanding area for the storage of ro-ro bins and skips, provision of 30 car parking spaces including 18 spaces for vehicles and trailers; All landscaping, boundary treatments, drainage and associated site

development and ancillary works necessary to facilitate development. A Request for FURTHER INFORMATION was issued on 31/05/2023.

- 3.3. S99A/0295: Applicant: Chadwicks Ltd. Permission for the construction of industrial storage building approx 277 sq.m. floor area, temporary prefabricated office building approx 78 sq.m. floor area, retaining wall to East and part South boundaries, palisade fencing to West, South and East boundaries additional tarmac area at existing building and ancillary works. Permission was GRANTED on 16/12/1999.
- 3.4. Adjacent site to the immediate north-west
- 3.5. SD10A/0361: Applicant: Lidl Ireland GmbH. Permission for an extension to the existing Lidl Licensed Discount Foodstore on a site of 0.9051 hectares at Greenhills Road, Walkinstown, Dublin 12 measuring approximately 104sq.m. gross floor space, increasing the gross floor space of the store from 1,653sq.m. to 1,757sq.m. The proposed extension is single storey with a flat roof and located to the side of the existing store and will be finished with materials consistent to the existing store. The proposed development also comprises an enclosed plant area adjoining the proposed extension, internal modifications/connections to the existing store and all associated works. Permission was GRANTED on 15 Mar 2011 subject to 9 no. conditions.
- 3.6. SD05A/0552: Applicant: Lidl Ireland GmbH. Permission for modifications and alterations to a previously approved planning permission (Reg.SD04A/0784) for the construction of a single-storey food discount store with a pitched roof (1,734 sq.m), the modification will consist of the following; incorporation of an off-licence for the sale of beers, wines and spirits; reduction of the store floor area to (1,695 sq.m) with minor alterations to the elevations, reduction in surface parking from 185 to 169 car spaces, addition of bicycle parking, a store floor level change from 67.000m to 68.150m, relocation of the proposed up-graded vehicular site entrance 24m to the west and associated site works. Permission was GRANTED on 3/12/2005 subject to 9 no. conditions.
- 3.7. SD05A/0089: Applicant: Lidl Ireland GmbH. Permission for 1 no. 2.5m x 2.5m (double sided) 7-meter-high flagpole located at the north entrance with a base height of 69.00m and top height of 76.00m on the footing of a previously approved planning application No. SD04A/0784. Permission was GRANTED on 1/09/2005.

3.8. SD04A/0784: Applicant: Lidl Ireland GmbH. Permission for the demolition of existing industrial premises with front boundary wall and associated works and construction of a discount food store (1,734sq.m.) comprising of a single storey pitched roof structure with enclosed dock leveller, signage, 1 no. flagpole, surface parking for 185 cars, boundary treatments, upgraded vehicular site entrance and associated site works. Permission was GRANTED on 01/02/2005 subject to 8 no. conditions.

3.9. Relevant Planning Enforcement History

3.10. Enforcement Ref. S8649. Creation of hardstanding, installation of lights, operation commercial activity.

4.0 **Submission to the Local Authority**

4.1. The Appellant made a submission to the Local Authority seeking to have their land removed from the draft map.

4.2. The lands have an existing authorised commercial use. Rates have been paid for this use up to and including 2022. The lands are leased to a Waste Company for the purpose of storage and maintenance of their fleet of bin lorries, vans and skips. The submission includes photographs and copies of Rates Bills.

5.0 **Determination by the Local Authority**

5.1. Local Authority Decision: To retain Land Parcel SDLA00053244 on the map.

5.2. It has been determined that the Land Parcel SDLA00053244 site fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map for the following reasons:

1. *The land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development.*
2. *The land is serviced, or it is reasonable to consider may have access to services. Services means having access to the necessary public*

infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.

3. *The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains.*

5.3. The Local Authority determined that the site was in scope and should remain on the map.

6.0 The Appeal

6.1. Grounds of Appeal

- Response to Reason no. 1:
 - The Appellant accepts this reason.
 - The mixed-use zoning was not disputed in the initial submission.
 - Lands form an integral part of the existing lands owned by the Appellant/ leased to the referenced Waste Company.
 - Permission previously granted under S99A/0295 for industrial storage building (c. 277 sqm) and associated development.
 - The industrial storage building is used by the referenced Waste Company to repair and store waste collection skips.
 - The subject site which comprises a yard is ancillary to this use and as such bins awaiting repair are stored here temporarily. SDCC claim the current use does not conform to the permitted use.
 - The Appellant considers that the current use of the site to be authorised and references an exemption under the Planning and Development regulations.
- Response to Reason no. 2:
 - The reason is accepted.

- The fact that the site may have access to services was not disputed in the initial submission to SDCC.
- Response to Reason no. 3:
 - This reason is refuted.
 - The subject site, while it may be suitable for residential development, is currently in use as a commercial business. As noted, the subject site is used for the repair and storage of broken bins used by the lessee. The subject site is adjacent to referenced Waste Operators main depot where its fleet of vehicles is stored. To tax the subject site would be grossly unfair on a growing business employing hundreds of employees and providing waste collection services to the adjoining neighbourhoods.
- Further Reasoning:
 - Site is leased by an established and growing Waste Collection Company.
 - Planning Application reg. ref. no. SD23A/0071. Decision due on 31st May 2023. (As noted in Section 3.0 above, A Request for FURTHER INFORMATION was issued on 31/05/2023).
 - If permission is Granted, the proposed development will provide modern recycling facility for residents of Walkinstown and adjoining areas. It is noted that the cessation of liability to Residential Zoned Land Tax is triggered by the following criteria:
 - 1. Homes are developed on the site. While the tax may be deferred during construction, it is only when the homes are actually completed that the land may fully come outside the scope of the tax.
 - 2. Where the land was zoned as suitable for both residential and other development, and permission is granted for development other than residential, the land will come outside of the scope of the tax upon the commencement of the construction of non-residential development.

- If the zoning on the land is changed, such that it is no longer zoned as suitable for residential development.
 - If it is discovered, after publication of the final map, that the land is not suitable for development, it will also come out of charge. An example of this might be where the land clearing uncovers significant archaeological remains resulting in the land becoming undevelopable for housing.
- While we contend that the current use of the subject site is authorised and forms part of a viable commercial business, we note that item 2 above allows for the cessation of liability should planning permission be granted for development other than residential on lands zoned for mixed-use development such as the subject site.
 - It is likely that a decision will be issued on the above planning application while this appeal is being decided and we ask the Board has dues regard to the planning application in their decision making.

7.0 Assessment

- 7.1. The comments raised in the appeal are noted.
- 7.2. A decision is pending on planning reg. ref. no. SD23A/0071 which relates to the subject site. Reference is made in the planner's report attached to SD23A/0071 to '*Relevant Enforcement History, Enforcement Ref. S8649. Creation of hardstanding, installation of lights, operation commercial activity.*'
- 7.3. The Local Authority is not satisfied that the trade or profession being carried out on, or adjacent to, the land is authorised, namely as a yard ancillary to an approved warehouse and office development to the north. The Appellant has not provided any convincing evidence to the contrary. I am therefore of the opinion that the stated use of the lands is unauthorised.
- 7.4. In my opinion, the lands have a vacant and idle status as described in Section 3.12 of the Residential Zoned Land Tax Guidelines for Planning Authorities, 2022. The subject site therefore does not satisfy the criterion for exclusion from the map, as per the provisions of Section 653B c) i) of the Act.

- 7.5. Uisce Eireann, as per the Report dated 03/02/2023, in relation to Water Networks confirm the presence of 2 no. existing water mains, in close proximity to the site. In relation to Wastewater Networks, it is confirmed that the site is in close proximity to an existing 225mm sewer and that a network extension may be required. It is stated that this may require access to third party lands and that a large-scale development on the site would require a more detailed assessment and potential upgrades. No water supply or wastewater network capacity issues are raised by Uisce Eireann.
- 7.6. It is my opinion that the lands satisfy the criterion for inclusion on the map as set out in Section 653B (c) of the Act.

8.0 Conclusion

- 8.1. 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.

9.0 Recommendation

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

10.0 Reasons and Considerations

- 10.1. The lands identified as SD-C259-10 (Land Parcel ID: SDLA00053244) meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended.
- 10.2. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.3. 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.

Frank O'Donnell
Planning Inspector
7th September 2023