



An
Bord
Pleanála

Inspector's Report ABP-316412-23.

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	'Former Chivers Site', Coolock Drive, Dublin 17.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000058.
Appellant	Veni Vidi Vici Ltd.
Inspector	Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000058 (Parcel ID DCC000002691), are located on the eastern side of Coolock Drive and south of the junction with Greencastle Road. There are existing industrial structures and hardstanding areas on site.

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

ABP Ref. 305993-19 refers to a decision to grant alterations to permitted development under ABP 304346-19.

ABP 304346-19 refers to a grant of permission for the demolition of existing buildings and construction of 495 no. BTR apartments, creche, café, gym and associated site works.

There are a number of older applications for the lands included in the local authority assessment.

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 they have been unable to commence development due to procedural issues with planning legislation and a changed funding environment since the grant of permission was secured. The presence of a trunk c.450mm diameter public foul sewer passing through the site that needs to be delivered to facilitate the development of the site. There is no gas supply to the site. The site is used twice a year for a community funfair and throughout the year for the storage of funfair equipment.

A tow truck company also use the site for storage and the permitted development is co-ordinated with the wayleave that will be required for the diverted water main which traverses the site and the position of all buildings are outside the 6m wayleave to comply with Irish Water requirements.

5.0 Determination by the Local Authority

The local authority determined to include the site 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:

- a) Are zoned solely or primarily for residential use.
- b) Have access to, or can be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, as evidence in consultation with Irish Water and by the grant of planning permission by Dublin City Council for residential development on the lands
- c) Satisfy the other relevant criteria under section 653B of the TC Act.

6.0 The Appeal

6.1. Grounds of Appeal

- Reference to section 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022.
- The site has an extant permission and lands where connection to services would require materially significant works or statutory consents should be considered out of scope. The DCC assessment did not consider these factors.
- Necessary infrastructural works (roads, foul sewer drainage, water supply and utilities) are significant, therefor the lands should be out of scope.

- It is submitted that the appellant's lands do not satisfy the criteria of section 653B (b) of the Taxes Consolidation Act 1997 as it is not reasonable to consider that the site has access, or may be connected to public infrastructure and facilities 'with sufficient service capacity available for such development'.
- The DCC Determination does not comply with the Tax Consolidation Act 1997(as amended) and should be overturned by An Bord Pleanála.
- The subject lands are not connected to relevant services and provision has not been made in the existing infrastructure for connection.

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 Neighbourhoods) and therefore within scope of section 653B(a).

Whilst it is submitted that infrastructure elements/connections may not be in place at present, these would be expected to be provided in conjunction with the development of a site, generally developer led.

There is no correspondence on file from Uisce Eireann. The local authority is their submission assessment refer to consultation with Irish Water dated 01/02.23. The local authority states the site is serviced by a watermain along Coolock Drive and a level of service improvements may be required depending on the size of the development. In regarding to wastewater networks it is stated that a sewer runs through the site parallel to the Santry River and it is sated that this does not preclude developemtn as the sewer could be diverted by the developer.

Page 8 of the Residential Zoned Land tax- Guidelines for Planning Authority June 2022 (RZLT Guidelines) sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Issues

relating to capacity were not raised. Based on the information available I have no evidence that this is an issue.

Pg. 24 of the RZLT guidelines state:

If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.

The provision of infrastructure to the subject lands are considered to be in the control of Dublin City Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

With respect to the trunk sewer to traverse a section of the site and provision of a way leave. I note the nature of the infrastructure, given the scale of which and the provision of a way leave that has been integrated in the layout of a residential development on this site previously. I do not consider that it would meet the criteria for exclusion on those grounds and therefore the appeal on these grounds should be dismissed.

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 connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

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 use twice a year by a community funfair for recreational/leisure purposes is not a criteria for exclusion set out in section 653B(c).

With regard to the use of the lands by a tow company for storage and by a funfair for storage . As noted on 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'*. On the basis of the information submitted I have no evidence that this is the case. The local authority determined that the lands are within scope. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and the grounds of appeal should be dismissed.

Having regard to the foregoing I consider that the lands identified as RZLT 000058 (Parcel ID DCC000002691), 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.

Conclusion

The lands identified as RZLT 000058 (Parcel ID DCC000002691), are located on lands zoned for residential purposes, it is reasonable to consider that the site has access to services.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000058 (Parcel ID DCC000002691), meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, should be retained on the map and the grounds of appeal dismissed .

8.0 Recommendation

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

The lands identified as RZLT 000058 (Parcel ID DCC000002691), 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 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

29th June 2023