



An  
Bord  
Pleanála

## Inspector's Report ABP-316452-23

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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>	13 Gardiner Street Upper, Dublin 1.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	RZLT-000068
<b>Appellant(s)</b>	Kabrel Limited
<b>Inspector</b>	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 4 storey over basement terraced house and outbuildings at No. 13 Gardiner Street Upper, Dublin 1. The house 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. 13 Gardiner Street Upper is a Protected Structure in the Dublin City Development Plan 2022-2028 (RPS Ref. No. 3101 refers) and is located within the Mountjoy Square Architectural Conservation Area (ACA).
- 2.3. The site is not located within an area 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 have been 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. The site also forms part of an ACA; this designation would not preclude development.
- 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 they include / comprise a property which is not in use by a trade or profession, is not rated and which does not provide a service to the existing or future residential community.

## **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.
- The house / site has the benefit of an authorised use as a guesthouse which provides accommodation to residents of adjacent areas and further afield.
- The guesthouse is liable for commercial rates.
- The storage shed located at the rear of the site is used for storage purposes associated with the guesthouse business.
- The land identified for inclusion on the RZLT map forms part of the rear garden of the property.

### **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. There is access to the rear of the site from Kelly's Row via the existing outbuilding.
- 7.3. The appellant has indicated that an authorised use, namely a guesthouse operates from the site, that is liable for commercial rates and provides accommodation to residents of adjacent areas and from further afield. In its decision, the Planning Authority stated that the property was not in use by a trade or profession, is not rated and does not provide a service to the existing or future residential community.
- 7.4. Notwithstanding the differences between the appellant and the Planning Authority as set out above I note 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.
- 7.5. I do not accept that the guest house provides services to residents of adjacent areas. As such, 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.
- 7.6. 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 the guesthouse provides accommodation to residents of adjacent areas and further afield, that the business is liable for commercial rates, that the storage shed is required for

the existing commercial use on the site and that the land identified for inclusion on the RZLT map forms part of the rear garden of the property.

- 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 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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John Duffy  
Planning Inspector

15<sup>th</sup> August 2023