



An
Bord
Pleanála

Inspector's Report ABP-316455-23

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

Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin

Planning Authority

Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.

DM22/0047

Appellant(s)

The Trustees of Carmelite Monastery of St. Joseph

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject lands are located at Kilmacud Road Upper and comprise the Carmelite Monastery complex including the main residential building, a chapel, a lodge, outbuildings, car parking, gardens and a pasture field situated to the east of the monastery buildings. The immediate area in the vicinity of the lands are characterised by suburban residential development.

2.0 Zoning and Other Provisions

- 2.1. The subject land is zoned 'Objective A' in the Dun Laoghaire Rathdown County Development Plan 2022-2028, which states 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'
- 2.2. Carmelite Monastery (former Kilmacud Manor) described as a 'House' is listed on the Record of Protected Structures (RPS No. 1401 refers) in Appendix 4 of the Development Plan.

3.0 Planning History

Subject lands:

VV06D.303529 / PA. Ref. VS0078 – Appeal against entry of site located east of Carmelite Monastery on Vacant Sites Register. Appeal upheld - decision made to cancel.

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, inter alia, the Monastery is the home of Carmelite sisters, the grounds form an integral part of life here and are crucial to the well-being of the residents. Furthermore, a trade (distribution of altar breads) operates from the site; the sisters also provide care on-site for elderly/unwell sisters. The site is a refuge for flora and fauna.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site was in scope. The land is zoned for residential use. It is reasonable to consider it has access or can be connected to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development. It is reasonable to consider the land is not affected in terms of its physical condition by matters which would preclude the provision of dwellings.

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- Accept that the land is zoned for residential use. The Monastery is a residential institution, while the lodge accommodates 4 people.
- Sisters do not leave the site except for exceptional reasons. As such the lands are very important to the residents as they form an integral part of the Monastery. Therefore, it can be perceived that the land is affected by its physical condition and current use to preclude the provision of dwellings.
- The Monastery is exempt from Local Property Tax given its charitable status.
- Accept that the site can be connected to public infrastructure and facilities.
- Since 1888 the sisters have been carrying out a trade from the site, namely the distribution of altar bread sold to churches and communities across the country. A listing of local churches/facilities which are supplied altar bread by the Monastery is provided. This trade, which it is considered would not require planning permission, would be subject to commercial rates however the Monastery is a registered charity and as such is exempt from payment of rates.
- Site offers refuge to facilitate biodiversity. Assertion by Local Authority that this is not a reason to exclude the lands from the RZLT map is contrary to its own Climate Action Plan.
- Inclusion of the lands on the map would interfere with the sisters' way of life.

- Reference made to Appeal VVO6D.303529 which directed that the lands not be entered onto the Vacant Sites Register.

6.2. Planning Authority Response

- No response on file.

7.0 Assessment

- 7.1. The comments raised in the appeal submission are noted. The 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. The site is within a built-up area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 7.2. The appeal submission indicates the Monastery and its grounds are used as a residential institution and home to nine Carmelite sisters, and that the grounds are vital to the physical and mental well-being of the residents. While it is noted that the Local Property Tax is not payable in respect of the accommodation building associated with the Monastery as set out, the submission from the landowner to the Local Authority noted that LPT is paid in relation to the on-site lodge. Section 3.1.1 of the RZLT Guidelines states the following:

Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation).

While residential properties, the associated curtilage of which exceeds 0.4047 ha are also not liable for the tax (see section 653O(2) of the legislation), owners of such properties must register for the RZLT and provide certain information to the Revenue Commissioners. This does not require any action on the part of the Planning Authority.

Having regard to the above, it is apparent that the landowner (appellant) must register for the RZLT and provide information to the Revenue Commissioners to

demonstrate that the tax will not be payable. The issue of liability under the Tax Code is a matter for the Revenue Commissioners and is not a consideration under this appeal process.

- 7.3. Page 11 of the RZLT Guidelines states the following in relation to Operating Uses on Residential Zoned lands:

With reference to land that is included in a development plan or local area plan and 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 residential 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. Local Authorities should seek input from their Rates Offices in this regard.

I am not satisfied that the distribution business operating from the lands provides services to residents of adjacent residential areas, as required by section 653B (c) (i) of the legislation. I also note that the business operating from the site does not have the benefit of planning permission and as set out in the appeal submission, no commercial rates are liable. As such, it is apparent that the site does not qualify for exclusion from the map under section 653B (c) (i) of the Taxes Consolidation Act 1997, as amended.

- 7.4. Section 653B (c) states the following:

In this Part, a reference to land which satisfies the relevant criteria is a reference to land that (c) it reasonable to consider 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 known archaeological or historic remains

I do not accept the position put forward by the appellant that the land is affected by its physical condition and current use such that the provision of dwellings would be precluded. The physical condition of the land and/or its current use would not preclude the development of dwellings at this location.

- 7.5. The remaining Grounds of Appeal do not relate to any of the relevant qualifying criteria set out in Section 653B of the Act.

- 7.6. I am of the view that the land satisfies criteria 653B (b) of the Taxes Consolidation Act 1997, as amended, and that it is serviced or has access to services necessary

for dwellings to be developed and with sufficient service capacity available for such development. As such the lands could have development potential.

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 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 criteria 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.

John Duffy
Planning Inspector

19th September 2023