



An
Bord
Pleanála

Inspector's Report ABP-316514-23.

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 Factory Site, Finglas Business Centre, Jamestown Road, Finglas, Dublin 11.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000034.
Appellant	Jamestown Village Limited
Inspector	Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000034 (Parcel ID DCC000004729) refers to brownfield lands located at the Finglas Business Centre off the Jamestown Road in Finglas. The lands have a stated area of c. 1.7ha) are bounded by high walls along Jamestown Road and palisade fence along the western and southern boundaries.

2.0 Zoning

The lands are zoned Z14 Strategic Development and Regeneration Areas (SDRAs) in the Dublin City Development Pan 2022-2028 with a stated objective *“to seek the social, economic and physical development and/or regeneration of an area with mixed use, of which residential would be the predominant use”*.

The lands are identified as SDRA 3 Finglas Village Environs and Jamestown lands, where lands are to be developed at a ration of 70% employment/commercial and 30% residential. And that a Masterplan to be prepared for lands.

3.0 Planning History

ABP Ref. 312568-22 refers to a SHD development comprising the construction of 314 BTR apartments, office space, commercial and community uses. ABP grant is the subject of current Judicial Review proceedings.

VS-0542, Registered on the Vacant Site Register.

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 the taxes would prevent rather than encourage the activation of land for residential development; there is a deficiency in public infrastructure and facilities serving the lands; lands are not vacant/idle; DCC has commenced judicial review proceedings on ABP 312568-22 in respect of zoning; there is an existing ESB substation on lands; the lands are required for public open space, cycle lanes and road infrastructure as per SDRA 3 Fingal Village Environs and Jamestown Lands.

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 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 with sufficient service capacity, as evidence by the grant of planning permission by Dublin City Council for residential development on the lands (subject of judicial review),
- c) Are vacant (aside from an ESB substation) and there is currently no active use on the lands, are idle.
- d) Do not qualify for an exemption under section 653B of the T&C Act 1997 as amended, as they are not required for, or are integral to, occupation by energy/recreational/transport infrastructure and facilities as (A) the exiting ESB substation is to be demolished to facilitate redevelopment, and B) the detail – location and scale- of open space/cycle lanes etc will become more evident at the master planning/planning application stage.
- e) Meet the other qualifying criteria of section 653B of the T&C Act 1997 as amended. The final map showing lands that is liable for RZLT will be published on 1 December 2023 and this will reflect all Determinations made.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- Deficient public infrastructure and facilities serving the lands. Reference to IW correspondence dated 8th February 2021 which noted that upgrades to the water network would be required to accommodate the proposal (ABP 312568-22). Absence of current water and waste water connections. For the purposes of RZLT legislation the site is not serviced.
- Lands are not 'vacant or idle' as it is identified for mixed use lands.
- Dublin City Council judicial review proceedings on existing permission (ABP 312568-22 SHD development for 314 BTR apartments and commercial uses) in respect of zoning. Draft Masterplan for the SDRA was on public display by DCC until 14th May 2023.
- There is an ESB electricity substation on site.
- There is a pending judicial review which has restrained the appellants from implementing the planning permission.
- Lack of explanation in Dublin City Council Determination. Five reasons have not been expanded upon.
- It is submitted that the lands should be excluded for the purposes of the ZLT Act (appellants reference) as:
 - Lands which are not connected to or have access to water supply and foul sewer infrastructure with a significant upgrade required.
 - Lands which are not considered to be 'vacant or idle'.
 - Lands which, as assessed by Dublin City Council judicial review proceedings relating to a permission on site, are not, at this time, zoned for residential use (as a grant of permission for such use is, according to the Council's position, a material contravention of the development plan).
 - Lands that are required for public infrastructure.

- Lands that are affected by a pending legal challenge.

7.0 Assessment

The appellant has set out in the grounds of appeal that the planning authority have not provided a rationale/explanation for its reasons in the Determination. The grounds of appeal also raised issue with the nature/rationale of the RZLT, this is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. The Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states that "*in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only*".

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 Z14 (Strategic Development and Regeneration Areas (SDRA)) and therefore within scope of section 653B(a).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(i), unless it is reasonable to consider that the land is vacant or idle. The relevant land in this instance is a brownfield site comprised predominantly of areas of hardstanding and an ESB substation areas which is considered vacant/idle. Page 12 of the Guidelines set out that temporary uses of land should not result in land being excluded from the tax measure. On the basis of the information submitted the lands fall within the

scope of vacant or idle asset out in the legislation. Therefore should be retained on the RZLT map as it meets the criteria for inclusion under section 653B(c)(ii).

The appellants requested that their lands be removed from the map due to the absence of a masterplan as required by the current Dublin City Development Plan 2022-2028. And that DCC have brought judicial review proceeding on ABP 312568-22 (SHD) on the grounds of zoning. The current City Development Plan identified the lands as 'SDRA3 Finglas Village Environs and Jamestown Lands refer to all planning application in the Jamestown lands of the SDRA will be required to comply with the Masterplan, The appellant has stated that a Masterplan for the lands was on public display by DCC at the time of appeal. DCC has scoped the lands in for the purposes of RZLT. The requirement for a masterplan to be prepared is not included in the criteria for exclusion as set out under section 353B, as such I consider that the land complies with the criteria set out in section 353B of the Taxes Consolidation Act 1997, as amended and this ground of appeal dismissed.

The appellants have submitted that lands are required for public open space, cycle lanes and road infrastructure as per SDRA 3 Fingal Village Environs and Jamestown Lands. Any proposal would have to have regard to the requirements set out for the development of lands within SDRA3 but would does not preclude the lands from development as such I consider that the land complies with the criteria set out in section 353B of the Taxes Consolidation Act 1997, as amended and this ground of appeal dismissed.

With regard to the permitted development on the lands which is the subject of judicial review proceedings, this is not included in the criteria for exclusion as set out under section 653B, therefore this ground of appeal should be dismissed.

The appellants submit that there are deficient public infrastructure and facilities serving the lands and that for the purposes of RZLT legislation the lands are not serviced. The appellant has referred to IW correspondence dated 8th February 2021 which noted that upgrades to the water network would be required to accommodate the proposal (ABP 312568-22). Absence of current water and wastewater connections.

Correspondence on file from DCC Drainage Division confirms that surface water drainage is in close proximity. Correspondence from Uisce Eireann confirms that the

subject site is serviceable. It is currently serviced for water and depending on the size of future developments, service upgrades may be required. And in relation to wastewater networks that GIS records confirm that there is a sewer outside the site on the Jamestown Road and depending on the size of any proposed development, service upgrades may be required.

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 assessment of capacity were queried by the appellants. 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 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)

- 7.1. With regard to the presence of an ESB substation on the lands and as such the lands are 'not in scope' having regard to section 653B(c)(iii)(III).-I note the nature of

the infrastructure, given the scale of which, if required, could be relocated. Based on the information provided and available I do not consider that the lands should be scoped out the grounds of the presence of an ESB substation which could be moved if required. Furthermore I note that planning permission for a SHD on these lands.

Having regard to the foregoing I consider that the lands identified as RZLT 000034 (Parcel ID DCC000004729) 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 000034 (Parcel ID DCC000004729) are located on lands where residential development is permissible with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the zoning objective – Z14 (Strategic Development Regeneration Areas) that applies to this site.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000034 (Parcel ID DCC000004729) 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 lands be retained on the map.

9.0 Reasons and Considerations

The lands identified as RZLT 000034 (Parcel ID DCC000004729) 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

4th July 2023