



An
Bord
Pleanála

Inspector's Report ABP-316571-23.

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	40-42 O'Connell Street Upper (including O'Connell Hall).
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000013
Appellant	Dublin Central G.P. Limited.
Inspector	Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000013 (Parcel ID DCC000004334), are located on the northwestern side of O'Connell Street and extend westwards to Moore Lane and to Parnell Street. The lands include No. 42 O'Connell Street, plots associated with No. 40 to 41 (demolished) and a building fronting onto Parnell Street to the east of No. 70/71 Parnell Street. The lands are occupied by buildings/building remnants/areas of hard standing.

2.0 Zoning

The lands are zoned Z5 City Centre in the Dublin City Development Plan 2022-2028. With a stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design, character and dignity'. Residential is a permissible use under this land use zoning objective.

Lands are located within the Dublin Central Masterplan area.

No. 42 is on the Record of Protected Structure (Ref. No.4022), Vol.4 of the Dublin City Development Plan 2022-2028.

The lands are located within O'Connell Street Architectural Conservation Area.

The lands area located within the Zone of Archaeological Potential DU018-020.

3.0 Planning History

PA Ref. 2726/08 (ABP Ref. 29N.232347) refers to a grant of permission for a mixed use development comprising demolition of No. 40 & 41, provision of retail and office ant No.40 and 41 O'Connell Street and commercial gallery at No. 42. This permission was extended to 2018.

PA Ref. 2479/08 (ABP Ref. 29N.232347) refers to a grant of permission for mixed use development with significant retail on overall site of c.2.17 ha to May 2022

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 works required to be undertaken to provide adequate public services to facilitate the redevelopment of these lands, including any residential development potential, were not in place as of 1 January 2022. Query if there is sufficient capacity available for such development and that significant works would be required to enable same to occur. Requirement for public services including footpaths, lighting and water connection represents 'significant works'.

5.0 Determination by the Local Authority

The local authority determined that the site should be included 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:

- Are zoned for mixture of uses, including residential use.
- Being brownfield lands, have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity as confirmed by Uisce Eireann, as evidence by planning permissions/decisions to grant permission for significant development on the lands/adjacent lands.
- Are vacant and idle as the lands are not in active use/have been partly cleared.
- Are not required for transport facilities and infrastructure and community/recreational uses as the lands are zoned for a mixture of uses, including residential use and can be developed.
- While subject to statutory designations can be developed
- Meet the qualifying criteria in section 653B of the TC Act as amended.

6.0 The Appeal

6.1. Grounds of Appeal

- Principle of RZLT, a punitive tax.
- While residential is permissible under Z5 City Centre land use zoning and in theory available for residential use but other relevant criteria should scope out the site.
- Public infrastructure has not yet been determined beyond doubt for the significant development within the Dublin Central Masterplan lands, Live applications with DCC and ABP for determination.
- The Dublin Central Masterplan does not envisage residential use for the lands. Notwithstanding, any significant development of the site would require significant upgrades to public services. These would represent 'significant works' which have not yet commenced or completed.
- Statutory designations that may preclude development, No. 42 O'Connell Street is on the Record of Protected Structures and the lands are located within O'Connell Street Architectural Conservation Area.
- The site is not vacant/idle as it forms part of the wider Dublin Central Masterplan Area which are being progressed in a sequential manner. There are 5 applications to date to develop the wider Master Plan lands.
- Site constraints and complexity in delivering development of the Dublin Central Masterplan lands in the form of a) restrictions arising from the surrounding road network and the narrow existing lanes within the overall site; b) restricted access arising from two major pedestrianised streets flanking the overall site; c) protected structures and non-protected structures proposed to be retained; d) neighbours including residents and local businesses and e) scale and nature of construction works to be undertaken.
- Lands are required for transport facilities and infrastructure and community/recreational uses. The need to sequence development of the Dublin Central Masterplan lands from Henry Place to Parnell Street (i.e. south

to north). The appeal lands can only be delivered on foot of prior development to the south, including completion of the Metrolink enabling works.

7.0 Assessment

The lands are zoned Z5 City Centre under the current City Development Plan. 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 includes building/building remnants/ areas of hard standing. Page 12 of the Guidelines set out that 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land. The requirement for lands to be developed in a sequential manner or former apart of wider Masterplan lands are not included in the definition of vacant or idle. 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) and this ground of appeal should be dismissed.

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.

Correspondence on file from Uisce Eireann states that the subject site is serviced for water supply and depending on size of any future development, service upgrades may be required. And that the site is serviced for wastewater collection. Page 8 of the 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 Residential Zoned Land Tax Guidelines for Planning Authorities 2022 (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 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'. The lands are comprised of urban plots that are bounded by urban streets and lanes in Dublin city centre and 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.

Having regard to the foregoing 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 status of No. 42 O'Connell Street as a protected structure does not preclude it from development, nor does the presence of lands within O'Connell Street ACA. Any application would be assessed on its own merits but in principle their status is not an impediment to development. I note that there is a history of development being permitted on this site by DCC and ABP which included conditions relating to built and cultural heritage. I also note that DCC Conservation Officer prepared a report as assessment stage and concluded that the status of the site does not preclude it from development. I do not consider that sections of the lands should be excluded on this basis and the grounds of appeal relating to this matter be dismissed.

While not raised in the grounds of appeal I also note that lands are located in a Zone of Archaeological Potential.

Page 9 of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 (RZLT Guidelines) set out *'brownfield land which lies within a zone of*

notification may be scoped in, as development has taken place on the land and matters relating to resolution of potential archaeological remains can be dealt with during the development management process'

The location of lands on lands designated a Zone of Archaeological Potential do not preclude it from development which would be assessed by the relevant planning authority through the Development Management process. Any application would be assessed on its own merits but in principle the location of the lands within a zone of archaeological potential is not an impediment to development. I do not consider that sections of the lands should be excluded on this basis.

The location on lands which form part of a wider master plan area does not preclude it from development and is not a criteria for exclusion under section 653B(c).

The local authority assessment addressed the portion of substratum lands proposed to be acquired (site references: No. ML5F-U4 & No. ML5F-U5) to provide the proposed Metrolink. The planned O'Connell Street Metrolink station is proposed at adjoining lands. The Draft Railway Order for MetroLink (Reference NA29N.314724 decision due date 21 December 2023). The extent of enabling works proposed do not constrain the development of the lands. Any application for development would be assessed on its own merits but in principle the location of the lands required for some degree of enabling works is not an impediment to development. I do not consider that sections of the lands should be excluded on the basis that they are integral to the occupation by transport facilities and infrastructure and the grounds of appeal relating to this matter should be dismissed.

Having regard to the foregoing I consider that the lands identified as RZLT 000013 (Parcel ID DCC000004334), meet the qualifying criteria set out in section 653B of the Taxes and consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

Conclusion

The lands identified as RZLT 000013 (Parcel ID DCC000004334), are located on lands where residential use is a permissible use. It is reasonable to consider that the

site has access to services, the presence of a protected structure or the location on lands designated an ACA , located within Masterplan lands or on lands the subject to proposed MetroLink enabling works do not preclude it from development which would be assessed by the relevant planning authority through the Development Management process.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000013 (Parcel ID DCC000004334), 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 000013 (Parcel ID DCC000004334), 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

28th June 2023