



An
Bord
Pleanála

Inspector's Report

ABP-316595-23

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	Blackthorn Drive and Carmanhall Road, Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	DM22/0081
Appellant(s)	Dante Property Company Limited
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is situated to the east of Blackthorn Drive and north of Carmanhall Road, with frontage onto both of those roads. The surrounding area is characterised by mixed uses with more modern apartment buildings adjacent and proximate to the site. Currently occupying the site is an unfinished building known as the Sentinel Building.

2.0 Zoning and other provisions

- 2.1. The site is zoned under the Dún Laoghaire Rathdown Development Plan 2022-2028 as 'Objective MIC' 'To consolidate and complete the development of the mixed use inner core to enhance and reinforce sustainable development.' Specific Local Objective 141 also applies to the subject site.
- 2.2. Table 13.1.17 describes 'Residential' use as 'Open for Consideration' with annotation highlighting that this 'Only applies to the unfinished building referred to in Specific Local Objective 141 (Carmanhall Road / Blackthorn Drive).

Specific Local Objective (SLO) 141 is noted on page 330 of the Development Plan to be: *"To facilitate completion of the unfinished Block and allow consideration of a maximum of 110 residential units."*

3.0 Planning History

- 3.1. Current Application Reg. Ref. LRD23A/0505 relating to a wider site area than the subject site – Submitted 27th July 2023, Decision Due 20th September 2023 for:
The development will comprise of the completion of the Sentinel Building to provide for 110no. apartments. Particulars of the development will comprise as follows:
 - The provision of 22 no. 1 bed units, 60 no. 2bed units & 28 no. 3 bed units along with provision of associated residential communal spaces both at terrace roof level and within the building. Ancillary communal spaces at ground level within the building will include for a resident's gym and resident's lounge.
 - The provision of 2 no. additional floors on the existing 6 storey section of the existing Sentinel building.

- The provision of associated internal works and elevational works to complete the building.
- Provision of associated car parking and motorcycle parking at basement level.
- Provision of electric vehicle charge points with associated site infrastructure ducting to provide charge points for residents.
- Provision of associated bicycle storage facilities at basement level and bin storage facilities.
- Provision of associated bicycle storage facilities at ground level.
- Use of existing access from Blackthorn Drive.
- Provision of an ESB substation at ground floor level.
- All ancillary site development works to include for plant and works to facilitate foul, water and service networks for connection to the existing foul, water, and ESB networks.

3.2. Application Reg. Ref. D13A/0457 – Planning Permission GRANTED on 7th August 2014 for development at this 0.195 ha site approximately comprising a substantially constructed, but unfinished building known as "The Sentinel" (Block C), located on part of the former Allegro Site (now known as "Rockbrook"), Blackthorn Drive, Sandyford Business Estate, Sandyford, Dublin 18. (Reg. Refs. D05A/1159 and D09A/0117). The development will consist of: revised internal configuration of permitted office floorspace to comprise 294no. office suites and 28 no. meeting rooms; the provision of two additional floors(1,490sqm) to the existing 6 storey part of the building adjoining Block A; the provision of the ground floor café/restaurant use (198 sqm); new entrance to Blackthorn Drive; elevational amendments; ancillary areas and all site development works. Car and cycle parking provision will be as previously permitted (Reg. Ref.D05A/1159). Vehicular access to the site will be as previously permitted from Blackthorn Drive (An Bord Pleanála Reference: PL 06D. 238756).

3.3. Application Reg. Ref. D05A/1159 – Permission GRANTED on 7th June 2006 (parent permission) for 847 apartments, neighbourhood retail shops, café, office, creche, community building and 39 live/work units.

4.0 **Submission to the Local Authority**

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. It stated that:

- The ZLT Act is a taxing statute and those must be interpreted strictly. In particular, no liability to tax should be imposed by reason of ambiguity or slack language. (Reference to associated case law).
- Purpose is to encourage the timely activation of zoned and serviced residential development rather than to raise revenue.
- The site must be excluded because the site is not strictly zoned for residential or mixed use within residential permitted in principle.
- The Guidelines state that only lands where residential is permitted in principle are in scope.
- The residential development potential for the site is only an 'open for consideration' status in terms of zoning, therefore it is to be excluded from the ZLT and deemed not in scope.

5.0 **Determination by the Local Authority**

5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- The subject lands are zoned Objective MIC. Residential is listed as open for consideration with the proviso that this only applies to the unfinished building at Carmanhall Road / Blackthorn Drive, SLO 141 states: To facilitate completion of the unfinished block and allow consideration of a maximum 110 residential units.
- Not the Guidelines provisions with respect to zoning and that where residential is not 'permitted in principle' on a land use zoning matrix, such zonings should not be included. Notwithstanding this provision under the Guidelines (which authorities must 'have regard' under Section 28 of the 2000 Act, as amended) it is not considered that this statement can take account of

all situations and the ultimate decision on what land to include or exclude from the mapping must be made on the basis of the terms of the TCA 1997 itself.

- Given that residential uses are listed open for consideration at the subject lands and that there is a specific SLO that references residential development and a maximum number of units at this site, it is considered that the lands are zoned for a mixture of uses, including residential use, within the meaning of Section 653B(a)(ii) of the Act.
- The lands are also considered vacant and idle as per Section 653B(ii) of the Act.
- It is also reasonable to consider that the land may have access, or be connected, to public infrastructure and facilities.

6.0 The Appeal

6.1. Grounds of Appeal

- The grounds of appeal restate the submission to the Local Authority as summarised in section 4 of this report above.

7.0 Assessment

7.1. Section 653B of the Taxes Consolidation Act 1997 (as amended) states:

“Criteria for inclusion in map

653B. In this Part, a reference to land which satisfies the relevant criteria is a reference to land that—

(a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use, or

(ii) for a mixture of uses, including residential use,”

7.2. The subject site is zoned for a mixture of uses, those which are permitted ‘in principle’ range from advertisements, childcare, healthcare to various commercial

uses. Residential is listed as 'open for consideration' with an annotation that this only applies to the subject site and with reference to Specific Local Objective 141.

- 7.3. Specific Local Objective (SLO) 141 is noted on page 330 of the Development Plan to be:

"To facilitate completion of the unfinished Block and allow consideration of a maximum of 110 residential units."

- 7.4. Section 13.1.4 of the Development Plan states that 'Uses shown as 'Open for Consideration' are uses which may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.' Therefore, there is no assumption that residential will be permitted on a site where it is 'open for consideration'.

- 7.5. The Local Authority states that residential is permitted under SLO 141, however as extracted above, the wording on page 330 of the Plan states that 'consideration' will be given to a development of a maximum 110 units. While reference is made 'to facilitate the completion of the unfinished block', this is not a specific reference to residential use, and the most recent planning approval on the site relates to office use in 2014 (section 3 above refers).

- 7.6. The zoning of the site is for a mix of uses, which does not include residential as 'permitted in principle'. The RZLT Guidelines are clear in section 3.1.1 that in consideration of lands within scope:

"...This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed use zonings where residential developments are permitted in principle."

- 7.7. There is no ambiguity in the guidelines, which are clear that in order to meet RZLT criteria, lands need to be zoned for residential as a permitted in principle use, and not merely open for consideration as is the case with the subject site.

- 7.8. I note that a current Largescale Residential Development application has been submitted on the site for 110 residential units, however the RZLT provisions are

concerned with the zoning of the site, which in this case, and for the reasons set out above, is outside of scope for inclusion on the map.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

9.0 Reasons and Considerations

- 9.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the Residential Zoned Land Tax Guidelines for Planning Authorities June 2022; the site is zoned for mixed use under the Dún Laoghaire Rathdown Development Plan 2022-2028, where residential use is not identified as a 'permitted in principle' use, and as such cannot be considered in-scope for the RZLT.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Rachel Gleave O'Connor
Senior Planning Inspector

25 August 2023