



An  
Bord  
Pleanála

## Inspector's Report ABP-316627-23.

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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>	Former Swiftcall Offices, Merrion Road, Dublin 4.
<b>Local Authority</b>	Dublin City Council.
<b>Local Authority Reg. Ref.</b>	RZLT 000042.
<b>Appellant</b>	Lamtos Unlimited Company.
<b>Inspector</b>	Dáire McDevitt

## **1.0 Site Description**

The lands subject to this appeal, identified as RZLT 000042 (Parcel ID DCC000004686), are located on the eastern side of Merrion Road, near its junction with Elmpark. The lands are bounded to the east by Nutley Stream, the railway line with Sandymount Strand to the east of the rail line. To the north is Jacobs Engineering Group and the Texaco garage. To the south are GNI pipelines and Booterstown March. At present the site comprises single and two storey building with surface car park. Vehicular access is off Merrion Road. The Former Swiftcall offices are not in use and the surface carpark appears to be in use by Jacobs Engineering Group.

The site adjoins Dublin Bay (SAC and SPA) and is to the north of Booterstown pNHA.

## **2.0 Zoning**

The lands are zoned Z10 'Inner Suburban and Inner City Sustainable Mixed Uses' in the Dublin City Development Plan 2022-208 with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant use in inner city areas'.

The lands are located on Flood Zone A Defenced Area.

## **3.0 Planning History**

Planning history associated with the former Swiftcall offices site is set out in the documentation.

This includes pre-application consultation for SHD development under ABP307176-20 (no application lodged).

The grounds of appeal note that the lands are the subject of an emerging LRD application although the costs and uncertainties around the contaminated nature of the site and environmental sensitivities is proving challenging.

## 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 lands are required for the operation of an authorised trade/profession adjacent to the site and the site was identified as being potentially contaminated and at risk of flooding.

## 5.0 Determination by the Local Authority

Dublin City Council issued two separate Determinations:

A)

### Determination:

Dublin City Council has evaluated the submission and has determined that the date on which the land constituting the site first satisfied the relevant criteria was on or prior to 1<sup>st</sup> January 2022 and the date will not be changed.

Reason:

The lands 'Existing building on lands at the Former Swiftcall Offices' – were zoned for a mixture of uses, including residential use (currently Z10 'Inner Suburban and Inner City Sustainable Mixed Uses') on or before 1<sup>st</sup> January 2022.

The lands 'Existing building on lands at the Former Swiftcall Offices' – have/had access to public infrastructure and facilities, with sufficient service capacity on or before 1<sup>st</sup> January 2022 as evidenced by the use on the site/planning history of the site. Significant works are not required to be undertaken to provide adequate public services to facilitate the redevelopment of these lands, including for any residential development potential.

B):

### Determination (split):

Determination Part 1: Existing carpark on the lands at the Former Swift call Offices:

Dublin City Council has evaluated the submission received in relation to the above site and has determined to exclude these lands from the final map on the basis that the site does not constitute land satisfying the relevant criteria as set out in section 653B of the Act.

Reason:

The lands do not satisfy Section 653B of the Taxes Consolidation Act 1997, as amended, as the lands are zoned for a mixture of uses, including residential use but are required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

Determination Part 2: Existing building on the lands at the Former Swiftcall Offices:

Dublin City Council has evaluated the submission received in relation to the above site and has determined to include these lands on the final map on the basis that the site constitutes land satisfying the relevant criteria as set out in section 653B of the Act.

Reason:

- Is zoned for mixture of uses, including residential use.
- Has access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as evidence by the planning history of the site.
- Is vacant/ idle as there is currently no active use of the building.
- May be affected by potential contamination but such an issue can be managed as part of a planning application on site and therefore is reasonable to consider that the lands is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination.
- Meet the qualifying criteria in section 653B of the TC Act as amended.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal are summarised as follows.

- Reservations about the application of a punitive tax and consider that the blanket introduction could have serious unintended consequences and impact negatively on the supply of new homes.
- Contaminated lands due to historic site use as a dyeworks in the late 19<sup>th</sup>/early 20<sup>th</sup> century may have impacted soils, perched water and groundwater quality beneath.
- Ground investigations show evidence of elevated levels of hydrocarbons in the made ground beneath the site. Additional environmental investigation and risk assessment works would be required before proceeding with any application.
- Nutley stream running along the rear of the site forms a direct hydrological link between the site and the Sandymount Strand/Tolka Valley Estuary SPA and South Dublin Bay SAC. Site also has a very high water table.
- Given the uncertainties around the contaminated nature of the site and the environmental sensitivities of its immediate surrounds it is proving challenging in arriving at a viable and sustainable development proposal that suitably responds to the context at this particular location.
- The subject lands lie in an area identified in the SFRA Site 8- Sandymount and the Irish Coastal Protection Strategy (ICPSS) maps as Flood Zone A Defended Area and is at risk of coastal flooding from Dublin Bay. Any development on the lands would require a Stage 3 Detailed Flood Risk Assessment, inclusive of a Justification Test.

The appeal documentation includes:

- DCC Notification of Determination.
- First party appeal report.
- Copy of submission made to DCC.
- OS site location map.
- Site Investigation Report.

## 7.0 Assessment

The Planning Authority issued separate Determinations dated 29<sup>th</sup> March 2023. The first Determination determined that the date on which the land constituting the site first satisfied the relevant criteria was on or prior to 1<sup>st</sup> January 2022 and the date will not be changed. This Determination is not the subject of the current appeal before the Board.

The second Determination was a Split Determination and the grounds of appeal relate only to 'Determination Part 2: Existing building on the lands at the Former Swiftcall Offices'.

The appellant has set out in the grounds of appeal that they consider the tax to be punitive and outline their fears of potential unintended consequences. 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 Z10 Inner Suburban and Inner City Sustainable Mixed Uses' and therefore within scope of section 653B(a)(ii).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. The relevant land in this instance was determined by the local authority to be vacant/idle. The land in this instance includes a vacant building/ areas of hard standing. On the basis of the information submitted the lands fall within the scope of vacant or idle asset out in the legislation, therefore meet the criteria for inclusion under section 653B(c)(ii) and the grounds of appeal relating to this matter should be dismissed.

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. 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 comprise of urban plot 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, satisfies the criteria cited in section 653B (b) of the Taxes Consolidation Act 1997, as amended.

The grounds of appeal submit that a historic site use as a dyeworks in the late 19<sup>th</sup>/early 20<sup>th</sup> century may have impacted soils, perched water and groundwater quality beneath. A Site Investigation Report is submitted to support this. I note the argument submitted. I am of the view that the potential for contamination of lands would not preclude it in principle from development as the potential historical contamination could be addressed through appropriate measures in any application for development of the lands.

With respect to the submission by the appellant that the land on Flood Zone A and at risk of coastal flooding. The local authority is its assessment did not provide a comment in relation to the issue of flooding. Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing

including contamination and the presence of known archaeological or historic remains. While I note that flood risk is not mentioned in this sub-section, it is not excluded either, and the use of the word “including” would indicate that relevant matters of the site’s physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. However in this case the location of the lands on Flood Zone A are noted. The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) clearly set out that residential development on flood zone A is high probability of flooding and most types of development would be considered inappropriate for this zone and that development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Therefore I conclude that it would not be reasonable to consider that those lands are not affected in terms of their physical condition to preclude the provision of housing. I am of the view that the location of the appeal lands on land identified as Flood Zone A should be excluded from the final maps having regard to section 653B(c) and the grounds of appeal relating to this matter upheld.

## **8.0 Conclusion & Recommendation**

Having regard to the location of the lands identified as RZLT 000042 (Parcel ID DCC000004686) on land identified as Flood Zone A and having regard to the guidance set out in The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) that the lands identified as RZLT 000042 (Parcel ID DCC000004686) do not meet the criteria for inclusion under section 653B(c) of the Taxes Consolidation Act 1997, as amended. As it would not be reasonable to consider that the lands identified as RZLT 000042 (Parcel ID DCC000004686) are located on lands that are affected in terms of their physical condition by matters to a sufficient extent to preclude the provision of housing.



I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000042 (Parcel ID DCC000004686) do not meet the qualifying criteria set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended, should be removed from the final map and the grounds of appeal relating to the location of the lands on Flood Zone A upheld. On this basis I recommend that the board set aside the determination of the local authority and remove the lands identified as RZLT 000042 (Parcel ID DCC000004686) from the final map.

## **9.0 Reasons and Considerations**

The lands identified as RZLT 000042 (Parcel ID DCC000004686) do not meet the criteria for inclusion under section 653B(c) of the Taxes Consolidation Act 1997, as amended.

*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.*

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Dáire McDevitt  
Senior Planning Inspector

28<sup>th</sup> August 2023