



An
Bord
Pleanála

Inspector's Report

ABP-316759-23

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

Lands at Tedcastles Yard, Centre Park Road, Cork.

Local Authority

Cork City Council.

Planning Authority Reg. Ref.

CRK-RZLT-81.

Appellant(s)

Tiznow Property Company Ltd.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) refer to lands at Tedcastles Yard, Centre Park Road in Cork.

2.0 Zoning and other provisions

The relevant plan is the Cork City Development Plan 2022-2028.

The appeal lands are zoned ZO 02 New Residential Neighbourhood (Map 01).

A portion of the plot is located along the southern boundary is zoned ZO 08 Neighbourhood and Local Centres where residential use is a permissible use. This is excluded from the RZLT.

Identified as 'Strategic Regeneration Project'

Figure 2.21 'The Growth Strategy Map' identifies the lands as Tier 1 and Tier 2.

Section 2.51 notes 'Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan'.

Section 12.14 'Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan'.

Section 4.122 the CNDR will provide an orbital route for bus, pedestrian and cycle and some strategic and general traffic and will reduce reliance on radial routes through the city centre.

3.0 Planning History

ABP 313277-22 refers to a current SHD Application for the demolition of existing structures and construction of 823 no. apartments, creche and associated site works.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the draft map requesting that lands be excluded on the basis that lands are not serviced, physical condition precludes dwellings (contaminated lands and presence of invasive species) and due to the undue delays in planning permission being granted.

5.0 Determination by the Local Authority

The local authority determined that:

- The land is included in the Cork City Development Plan 2022-2028, in accordance with section 10(2)(a) of the Act and is further zoned (i) solely or primarily for residential use.
- These lands satisfy section 653(B) of the act, in that it is reasonable to consider that the land may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity for such development.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

1. The lands are not serviced for the purposes of the RZLT.
 - The site is currently not serviced with a sufficient water supply connection. The upgrade of the South Docks is still in progress and not completed.
2. The lands should be excluded because its physical condition precludes the provision of dwellings.
 - Unreasonable delay should be measured by reference to the duration to planning permission (5 years), potential legal challenges (c.2 years) and c. 1 year might be lost to securing planning authority agreement to compliance submissions made under the permission.

- Physical features include contaminated lands and the presence of invasive species which can take months to resolve. All of which it is submitted place an extraordinary time and cost burden on the landowner to resolve.
 - It is submitted that the physical features (contaminated lands and presence of invasive species), whether alone or cumulatively, do affect the site to a sufficient extent to preclude the provision of dwellings, whether by unreasonable delay or unreasonable cost.
3. Undue delays in the planning permission being granted. The subject lands are awaiting a decision from An Bord Pleanála on SHD application (ABP 313277-22) that was due for decision 2nd August 2022. This delay could not have been foreseen and it not the fault of the landowner.

7.0 Assessment

The comments raised in the appeal are noted. The local authority has submitted a copy of the Determination. There is no reports/assessment on file.

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. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 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".

The grounds of appeal submit that the lands should be excluded due to planning delays. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B. Timelines/delays associated with achieving full planning permission and commencing on site are not included in the criteria set out under section 653B of the Taxes Consolidation Act 1997, as amended.

Notwithstanding delays in the planning process. Section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 states “where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope, subject to (iii) below”. Section 4.1.1 (iii) refers to services to be considered.

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. While the lands are zoned ZO 02 New Residential Neighbourhood under the Cork City Development Plan 2022-2028 a portion of the appeal lands are identified as Tier 2 lands in Figure 2.21 ‘The Growth Strategy Map’. Section 2.51 states “Tier 2 sites are zoned land that are considered serviceable by physical infrastructure within the life of this Plan” and Section 12.14 states “Tier 2 lands are serviceable zoned lands that are not currently fully serviced but have the potential to become fully serviced within the life of the Plan”. Therefore in this instance, as set out above while the lands may become available during the lifetime of the plan, the portion of lands identified as Tier 2 were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B(a)(i). The remainder of the lands identified as Tier 1 remain in scope of section 653B(a)(i) and shall form the basis for the remainder of my assessment.

The grounds of appeal submit that the lands should be excluded as the lands are currently not serviced with a sufficient water supply connection. The upgrade of the South Docks is still in progress and not completed.

The provision of infrastructure to the subject lands are considered to be in the control of Cork City Council or Uisce Eireann and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map. There is no correspondence on file from UE.

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 in relation to the Tier 1 lands that the provision of access, footpaths, public lighting, foul, water and surface water drainage may be provided where land is in the control of the landowner or local authority. As such the lands identified as Tier 1 are considered to comply with Section 653B(b). And as set out above the portion of the lands identified as Tier 2 are not considered within scope of section 653B(a)(i) given the designation of the lands as Tier 2 which were not available for development on the relevant dates or on the date the local authority made its Determination and as such are not considered within scope of section 653B(a)(i).

The grounds of appeal submit that the lands should be exclude due to physical condition (contaminated lands and presence of invasive species). The grounds of appeal include a ' City Park Development at the Former Tedcastles Site, Contaminated Land Remediation Strategy' dated 28 March 2022. Page 9 of the RZLT Guidelines states *"Land which are unable to be developed due to the need for significant remediation are to be excluded form the scope of the measure.....Where lands are not identified as an EPA Licensed Site, any submission to the local authority requesting exclusion from the draft or supplemental map on this basis should submit verifiable evidence in the form of a preliminary site assessment report setting out the level of contamination no the lands, sufficient to enable the local authority to assess whether the land in question should benefit from this exclusion (See section 653B(c) of the legislation)."* There is no comment/assessment by Cork City Council on this matter. I have reviewed the City Park Development at the Former Tedcastles Site, Contaminated Land Remediation Strategy' which concludes that the biggest risk to human health is the presence of asbestos in soil and per- and poly-fluoroalkylated substances in sediment.

The appellants have also submitted that the presence of invasive species should exclude the lands from the RZLT. It is submitted that the physical features (contaminated lands and presence of invasive species), whether alone or cumulatively, affect the site to a sufficient extent to preclude the provision of dwellings, whether by unreasonable delay or unreasonable cost. Based on the information submitted by the appellants I do not consider that the lands are contaminated to the extent that 'it is reasonable to consider the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings'.

Having regard to the foregoing I consider that the Tier 1 lands identified as CRK-CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended and the grounds of appeal relating to this matter should be dismissed

The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The portion of lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) are located on lands zoned ZO 05 City Centre where residential use is a permissible use land are identified as Tier 2 lands in the Cork City Development Plan 2022-2028 and as such were not available for residential development on the relevant dates or at the time the local authority made its Determination. This portion of the lands is not in-scope of section 653B(a)(i) and therefore should be omitted from the RZLT map as it does not meet the criteria for inclusion under section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021). I recommend that the board set aside the determination of the local authority and direct the local authority to remove the portion of the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) as Tier 2 from the final map.

The remainder of the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) and Tier 1 are located on lands zoned ZO 05 City Centre where residential use is a permissible use land, 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 in principle for residential purposes. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. This portion of the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) 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. And I recommend that the board confirm the determination of the local authority relating to the remainder of the lands direct the local authority to retain the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) on the final map.

9.0 Reasons and Considerations

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 advice in section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The portion of the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) located on lands zoned located on lands zoned ZO 05 City Centre where residential use is a permissible use and identified as Tier 2 lands in in the Cork City Development Plan 2022-2028 and as such was not available for residential development on the relevant dates or at the time the local authority made its Determination. This portion of the lands does not comply with the criteria set out under section 653B(a) and as such do not meet the criteria for inclusion under

section 653B of the Taxes and Consolidation Act 1997 as amended (as introduced by the Finance Act 2021).

The remainder of the lands identified as CRK-RZLT-81 (Parcel ID CCLA00014555, CCLA00014560, CCLA00014554, CCLA00014562, CCLA00014561 and CCLA00014553) located on lands zoned ZO 05 City Centre where residential use is a permissible use 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 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.

Dáire McDevitt

Senior Planning Inspector

15th September 2023