



An
Bord
Pleanála

Inspector's Report ABP-316811-23.

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 Former RTE Campus, Montrose, Stillorgan Road (R138) and Ailesbury Close, Donnybrook, Dublin 4.

Local Authority

Dublin City Council.

Local Authority Reg. Ref.

RZLT 000004.

Appellant

Cairn Homes Montrose Limited.

Inspector

Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000004 (Land Parcel ID DCC 000002565) are located west of the main RTE campus buildings between the Stillorgan Road and the rear of dwellings fronting onto Ailesbury Road and Nutley Road in Donnybrook, Dublin 4. The site comprises two car parks on the eastern part adjoining the RTE Radion Station building, an open space area at the centre of the site with several structures including a disused studio set and Mount Errol House (protected structure) and associated stable buildings and the former RTE Sports and Social Club building.

The Notice of Determination was issued to Shariq Ansari (Cairn Homes Montrose Limited).

2.0 Zoning

The lands are zoned Z12 Institutional land (Future Development Potential) in the Dublin City Development Pan 2022-2028. Residential is a permissible use under this land use zoning objective.

3.0 Planning History

There is extensive planning history associated with the lands. Applications of note by the appellants include:

PA Ref. LRD 003/22-S3 (ABP Ref. 315488-23) refers to a LRD application for inter alia 688 apartments, hotel, childcare, amenities and associated works. ABP issued a decision on 12th July 2023. (The Local Authority RZLT Notice of Determination is dated 29th March 2023).

ABP 307239-20 refers to a grant of permission for SHD development comprised of 614 residential units, childcare and associated works. (Quashed following JR).

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 due to the risk of judicial review of a recent planning application delaying the delivery of housing on the site, wastewater infrastructure issues, archaeology issues and non-residential uses proposed under a current application on the site.

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, 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 available for such development, as evidenced by the grant of planning permission by Dublin City Council for large scale residential development on the lands.
- c) Are not affected, in terms of their physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including the presence of known archaeological or historic remains.
- d) satisfy the other relevant criteria under section 653B of the TC Act.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The Council on the 13th December 2022 issued a notification to Grant Permission for a LRD which was subject to 6 no. Third Party Appeals. The site does not have the benefit of planning permission, notwithstanding the letter from the Council stating there is a permission for a LRD on the site.
- Access to the site is dependent on works proposed as part of the LRD which is on appeal to An Bord Pleanála.
- Infrastructural constraints. Proposed upgrades are included as part of the LRD application which is on appeal.
- Unknown archaeological remains on the site, should not be included on RZLT until final grant of permission for the LRD and the conclusions of archaeological excavations determined.
- Non-residential uses which will sustain future residential communities. Block 05 comprises non-residential elements, including a 192 bed hotel.
- Protected structure (Mount Errol). Section 653B(c)(iv) the house is subject to a statutory designation that may preclude development and is proposed as non-residential development and should be excluded from RZLT.
- The land is not vacant/idle and should be excluded in accordance with section 653B (c)(ii).
- Z12 zoning requires c.20% open space and applies to c. 75% of the site.
- The owner has tried to bring the site forward for development since 2019, current third party appeals and previous third party judicial reviews are preventing this.
- It is submitted that the lands do not fall within the scope for the RZLT as it is not possible to gain access to public infrastructure owing to current Third party

appeals and the risk of judicial proceedings in the event of a positive decision from ABP and request that the lands be removed from the RZLT map.

7.0 Assessment

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 Z12 Institutional Land (Future Development Potential) and therefore within scope of section 653B(a).

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. On the basis of the information submitted the lands fall within the scope of vacant or idle as set out in the legislation. Therefore meets the criteria for inclusion under section 653B(c)(ii) and the grounds of appeal relating to this matter should be dismissed.

Page 11 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022 states '*where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I)-(IV) by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the lands area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out.*' The lands are zoned Z12 where residential use is permissible. The appellant has submitted that the proposed Block 05 should be excluded as it is for non-residential uses. As noted by the appellant in their grounds of appeal the LRD which contains Block 05 (hotel) was the subject of third party appeals at the date of the Determination and as such the lands remain in scope.

The appellants have also argued that the requirement to provide 20% open space under this land use zoning places a significant burden on the development potential of the lands. I am of the view that this requirement would not preclude the land from

development. Any proposal for the development of these lands would be required to have regard to this. in any proposed layout. I consider them to be within the scope and do not meet the provision of section 653B(c) for exclusion form the map.

It is submitted that said lands should be excluded under section 653B(c)(iv) as it does not satisfy the relevant RZLT criteria given the presence of a protected structure (Mount Errol) as the house is subject to a statutory designation that may preclude development and is proposed as ono-residential development and should be excluded from RZLT. The status of Mount Errol as a protected structure does not preclude it from development. Any application would be assessed on its own merits but in principle the status of Mount Errol is not an impediment to development. I do not consider that the lands should be excluded from the map on this basis and the grounds of appeal relating to this matter should be dismissed.

Lands where there is potential for archaeology 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 where there is potential archaeological is not an impediment to development. I do not consider that the lands should be excluded on this basis having regard to section 653B(c) and the grounds of appeal relating to this matter should be dismissed.

The appellants have argued that there are issues regarding access to the site and that access requirements are included as part of the proposed LRD, and that inclusion on the RZLT map is premature pending a decision on the LRD application. The site can be served in principle by the existing road network that is in place. As with all development, the applicant/ developer will be expected to provide for any internal road network necessary to serve the site and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the Local Authority. Therefore I consider that this ground of appeal should be dismissed.

The appellants have submitted that the lands should be excluded as their area infrastructure constraints. And proposed upgrades are included as part of the LRD application, which is on appeal, therefore any inclusion on the RZLT map is premature pending a decision on the LRD. There is correspondence on file from Uisce Eireann. This confirms that the subject site is serviceable, that there is a watermain at Ailesbury Court c.100m north of the site or, if access allows, in the Stillorgan Road. UE noted that depending on the size of the development, the Ailesbury Court sewer may require upgrading. UE have stated that the works do not preclude development of the site and could be carried out by the developer. UE note that they have no knowledge of land ownership and that the local authority may have local knowledge to consider alternative connections. The local authority in their assessment dated 20th March 2023 noted 'given the location of the lands within the footprint of the suburbs of the city and the planning history of the site, it is reasonable to consider that the lands have access or are connected to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available.

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 capacity were not raised. 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.*" Based on the information available I have no evidence that this is an issue. 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. 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. The local authority determined that the lands are in scope. Overall I am of the view that it 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)

With regard to the permitted development on the site which was the subject of an appeal with An Bord Pleanála at the time of the local authority made its Determination. And the potential for judicial review proceedings if a positive outcome was received from The Board. Appeals and Judicial Review Proceedings are not included in the criteria for exclusion as set out under section 653B, therefore this ground of appeal should be dismissed.

Having regard to the foregoing I consider that the lands identified as RZLT 000004 (Land Parcel ID DCC 000002565) 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.

8.0 Conclusion & Recommendation

The lands identified as RZLT 000004 (Land Parcel ID DCC 000002565) are considered in scope of section 653B(a). The lands are located 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 in principle and there is no reason why they cannot be developed in principle in accordance with the zoning objective – Z12 that applies to the lands identified as RZLT 000004 (Land Parcel ID DCC 000002565)

I consider that the lands identified as RZLT 000004 (Land Parcel ID DCC 000002565) 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 recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified RZLT 000004 (Land Parcel ID DCC 000002565) on the map.

8.0 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 lands identified as RZLT 000004 (Land Parcel ID DCC 000002565) 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

16th August 2023