



An
Bord
Pleanála

Inspector's Report ABP-316884-23.

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

Albert Court, Grand Canal Street, Dublin2.

Local Authority

Dublin City Council.

Local Authority Reg. Ref.

RZLT 000080.

Appellant

Greg Kavanagh Holdco Ltd.

Inspector

Dáire McDevitt.

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000080 (Parcel ID DCC000003071), are located at Albert Court on the southern side of Grand Canal Street Lower. The portion of the lands fronting onto Grand Canal Street Lower has food trucks arranged around a central outdoor seating area. A terrace of cottages occupies the rear of the lands are access off Albert Court East.

2.0 Zoning

The lands are zoned Z1 Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2022-2028. Residential is a permissible use under this land use zoning objective.

3.0 Planning History

PA Ref. 2239/12 refers to a grant of permission for 4 no. houses on the site of a car park.

PA Enforcement Ref. E0431/12 refers to an alleged pay car park operating in the absence of planning permission. Case closed by DCC as established use since 2001.

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 in active commercial use.

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 solely or primarily for residential use.
- Have access, or can be connected, to public infrastructure and facilities as evidenced by their inner city location and the current use on the lands.
- Satisfy Section 653B (c)(i) of the TC Act, as amended, as they include/comprise property which while in use by a trade, this use is not authorised.
- Satisfy the other relevant qualifying criteria in section 653B(c)(i) of the TC Act as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The lands have an established commercial use, there are several food vendors operating on the site daily. It is therefore submitted that the lands should be excluded under section 653B (c)(i).
- The car park is occupied by food vendor trucks with outdoor seating, the food trucks serve the surrounding neighbourhood and add to the vitality of the locality.
- The use of the land for food trucks and outdoor seating has been in use for some time and will remain in place for the foreseeable future.
- Operates 7 days a week.

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 Z1 Sustainable Residential Neighbourhood and therefore within scope of section 653B(a).

With regard to the use of the lands currently for commercial uses. The appellants submit that the lands should be excluded under section 653B (c)(i) as the existing uses are commercial. The local authority determined that the lands are within scope.

Page 11 of the 2022 RZLT Guidelines states that *'land which is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates'*. On the basis of the information submitted I have no evidence that the uses on site comply with the requirements set out in the Guidelines. Furthermore the text does not refer to 'either/or' scenario with regard to criteria to be met. Based on the available information I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and the grounds of appeal should be dismissed.

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 is 'reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting and water/foul connections may be provided where land is in the control of the landowner or local authority.

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)

The grounds of appeal have not raised matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the lands identified as RZLT 000080 (Parcel ID DCC000003071) from the map.

8.0 Conclusion & Recommendation

The grounds of appeal have not raised matters under section 653B that would warrant the exclusion of the lands from the final RZLT map. Having regard to the foregoing I consider that the lands identified as RZLT 000080 (Parcel ID DCC000003071) 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 that the lands identified as RZLT 000080 (Parcel ID DCC000003071) be retained on the 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 grounds of appeal have not raised matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the lands identified as RZLT 000080 (Parcel ID DCC000003071) 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

21st August 2023