



An
Bord
Pleanála

Inspector's Report ABP-316898-23.

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	Clanwilliam Court, Clanwilliam Place & Mount Street, Dublin 2.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000150.
Appellant	Hibernia Real Estate Group Limited.
Inspector	Dáire McDevitt.

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000150 (Parcel ID DCC000002051), are located at Clanwilliam Court, Clanwilliam Place and Mount Street. The lands form part of the existing Clanwilliam Court development fronting onto Love Lane.

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. 4126/22 (ABP Ref. 314983-22) refers to a grant of permission for the demolition of the existing structures on the wider site and construction of a 4-8 storey commercial building.

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 site is the subject of an ongoing planning application (Reg. Ref. 4126/22, ABP Ref. 314983-22) under which the full extent of the site will be in commercial use. Submission refers to the financial viability of the proposed development is uncertain and therefore the RZLT is premature.

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, with sufficient service capacity as confirmed by Uisce Eireann, as evidence by the current use on the lands and the relevant planning history.
- Are used for residential purposes.
- Satisfy the other relevant 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:

- Block 6, being the property the subject to the Notice of Determination, comprises 20 residential apartments and 2 commercial units and comes under the definition of 'residential properties'.
- Reference to definition of residential property in the Notes for Guidance-Taxes Consolidation Act 1997, Finance Act 2022 Edition, Part 22A Residential Zoned Land Tax, December 2022 version.
- Reference to section 653O (relevant site) and section 3.2 (Exclusion of Residential Properties – Section 653O TCA 1997) which also reiterates that residential properties are excluded from the scope of RZLT.
- LPT is paid for all residential units in Block 6 for the current year.

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).

The grounds of appeal set out that the lands should be excluded as the lands (Block 6) identified as RZLT 000150 (Parcel ID DCC000002051) comprises 20 no. apartments and 2 no. commercial units. The grounds of appeal refer to section 653O (relevant site).

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets out that ‘ a number of exemptions are also set out within the provision, and while existing permanently -occupied residential dwellings will be indicated on the maps where located within a residential zoning, homes are not within the scope of the tax and the owners of such properties will not be liable for this tax.’

Section 3.1.1 of the guidelines includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that *“Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps, however homeowners of residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation).*

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 legislation does not give the board a role in determining whether a site is a ‘relevant site’ by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. 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 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”.

Whether the site complies section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

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 000150 (Parcel ID DCC000002051) 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.

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 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