



An
Bord
Pleanála

Inspector's Report ABP-316969-23.

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	Hampstead Avenue, Ballymun Road, Glasnevin, Dublin 9.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000087.
Appellant	Sparantus Ltd, Frostdale Ltd & Highfield Healthcare.
Inspector	Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000087 (Parcel ID DCC000003708) are located on the southern side of Hampstead Avenue and comprise Old Hampstead Hospital to the north and Elmhurst Nursing Home to the south. The referred to hospitals are not shown in the RZLT map. The RZLT reference refers to the lands which are sylvan landscapes and mature gardens.

DCU have two concurrent RZLT appeals under ABP316628-23 and ABP 316606 for lands with the same Parcel ID (DCC000003708).

2.0 Zoning

The lands are zoned Z12 Institutional land (Future Development Potential) 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. 1006/00 refers to a 22 bedroom extension and ancillary accommodation to protected structure Elmhurst Convalescent Home, Hampstead, Glasnevin, Dublin 9.

PA Ref. 1479/94 refers to a grant of permission for a 20 bedroom extension and ancillary accommodation to existing convalescent Home at Elmhurst Convalescent Home, Hampstead, Glasnevin, Dublin 9.

PA Ref. 2064/94 refers to a grant of permission for a 9 bedroom extension and ancillary accommodation and alterations to Hampstead Hospital, Hampstead Avenue, Glasnevin, Dublin 9.

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 lands are currently required for and integral to the provision of healthcare and elderly care services at Elmhurst Nursing Home and Elmhurst Day Hospital, the lands do not reasonably have access to, nor are they connected to, the necessary public infrastructure and facilities for dwellings to be developed and it has not been established that there is sufficient capacity available for any such development.

5.0 Determination by the Local Authority

The local authority issued a split determination.

Determination part (1): the northern portion of the Z12 lands (located east and north of the east west access route from Hampstead Avenue to Old Hampstead Hospital. DCC determined to include these lands 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 satisfy section 653B of the Taxes Consolidation Act 1997, as amended, as the lands are zoned solely or primarily for residential use, are suitable services having access to public infrastructure and facilities with sufficient service capacity and meet other qualifying criteria in section 653B of the Taxes Consolidatin Act 1997, as amended.

Determination part (2): the southern portion of Z12 lands located outside of Part 1. DCC determined to exclude these lands from the final map on the basis that the site does not constitute land satisfying the relevant criteria set out in in Section 653B of the Act.

Reason:

The lands do not satisfy section 653B(c)(iii)(II) of the Taxes Consolidation Act 1997, as amended, as the lands are required for, or is integral to, occupation by social, community or governmental infrastructure and facilities – specifically the Elmhurst Day Hospital and Elmhurst Nursing Home at Hampstead Avenue, Ballymun Road, Glasnevin, Dublin 9. capacity and meet other qualifying criteria in section 653B of the Taxes Consolidatin Act 1997, as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The appellants have lodged an appeal against Determination Part (1) only. This relates to the northern portion of the Z12 lands (located east and north of the east west access route from Hampstead Avenue to Old Hampstead Hospital).

The grounds of appeal are summarised as follows:

- The land should be excluded as does not satisfy section 653B(c)(iii)(II) as the land are required for and are integral to, occupation by social, community or government infrastructure and facilities ('Ground A'), The Badminton Hall is leased by a Martial Arts Club and is also used by the residents of the old Hampton Hospital and local community
- Does not satisfy 653B (c)(ii)(I) as the lands are required for and integral to a trade carried out on the lands and so the lands are not vacant or idle within the meaning of that section and section 653A91) TCA ('Ground B') as in use by Martial arts Club.
- Currently achieves it zoning objective ('Ground C')

7.0 Assessment

The appellants have submitted three grounds of appeal which I shall address under the labelling submitted: Ground A, Ground B: and Ground C.

Ground A of the appeal submits that said lands should be excluded as the land should be excluded as does not satisfy section 653B(c)(iii)(II) as the land are required for and are integral to, occupation by social, community or government infrastructure and facilities. It is submitted that the northern portion contains the 'Badminton Hall' which is used by the community and residents of Old Hampton Hospital as a recreational facility and is not limited to the playing of badminton or

snooker. It is currently lease to White Dragon Martial Arts club since August 2019. (letter from Club included with the appeal documentation). It is also submitted that the club uses outdoor areas during the summer months.

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.*’ In this instance the lands are zoned Z12 where residential use is permissible. There are no exclusions of specific objective pertaining to the healthcare/community use of these lands and as such I consider them to be within the scope and do not meet the provision of section 653B (c) for exclusion from the map.

Ground B submits that the lands do not satisfy 653B (c)(ii)(I) as the lands are required for and integral to a trade carried out on the lands and so the lands are not vacant or idle. It is submitted that the lands are not vacant/idle as in use by the Marital Arts Club.

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)(i), 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. Page 12 of the Guidelines set out that temporary uses of land should not result in land being excluded from the tax measure. On the basis of the information submitted the lands fall within the scope of vacant or idle asset out in the legislation. Therefore should be

retained on the RZLT map as it meets the criteria for inclusion under section 653B(c)(ii).

Ground C submits that the lands currently achieve its zoning objective as in use for community/recreational uses. 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 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".

Whether the uses on the lands currently (whether they have the benefit or not of planning permission) and whether these comply with or are seen to achieve the current zoning objective 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.

Having regard to the foregoing I consider that the lands identified as RZLT 000087 (Parcel ID DCC000003708) 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.

Conclusion

The lands identified as RZLT 000087 (Parcel ID DCC000003708) are located on lands where residential uses are permissible, services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The lands are accessible and there is no reason why

they cannot be developed in principle in accordance with the zoning objective – Z12 that applies to this site.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000087 (Parcel ID DCC000003708), meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, should be retained on the map and the grounds of appeal dismissed .

8.0 Recommendation

I recommend that the board confirm the determination of the local authority and that the indicated lands be retained on the map.

9.0 Reasons and Considerations

The lands identified as RZLT 000087 (Parcel ID DCC000003708) 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

6th July 2023