



An
Bord
Pleanála

Inspector's Report ABP-316983-23.

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

Part of ground floor of No. 5 Rutland Place, Dublin 1.

Local Authority

Dublin City Council.

Local Authority Reg. Ref.

RZLT 000142

Appellant

Cassidys Hotel Ltd.

Inspector

Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000142 (Parcel ID DCC000001639), refers to part of the ground floor of No. 5 Rutland Place which is stated to be in use in connection with Cassidys Hotel. No. 5 Rutland Place is a modern red brick building which partly sits within the compound of Cassidys Hotel and partly on Rutland Place.

There is a concurrent RZLT appeal for the same Parcel ID DCC000001639 by Cassidys Hotel Ltd under ABP 316987-23 relating to car park located on Rutland Place, Dublin 1 (located between No. 12 and 14 Rutland Place, Dublin 1).

2.0 Zoning

The lands are zoned Z1 Sustainable Residential Neighbourhoods with a stated objective 'to protect, provide and improve residential amenities'.

The lands area located within the Zone of Archaeological Constraint for the Recorded Monument DU18-020 historic city.

The lands site on the boundary with O'Connell Street ACA.

3.0 Planning History

PA Ref. No. 1346/98 refers to a decision to refuse permission for change of use from commercial to residential for studio at 5a/5b Rutland Place (change of use of the existing ground floor garage).

PA Ref. No. 2517/92 refers to a grant of permission for change of use of building from garage and residential to office (area of garage omitted from permission by condition).

4.0 Submission to the Local Authority

The appellants made a submission to the local authority setting out that c.40% of the ground floor of No. 5 Rutland Place is in the ownership of Cassidys Hotel and is used as a store. The remainder of the ground floor and flats above are in different ownership. The submission sought to have their lands removed from the draft map on the basis that it forms part of an authorised rate paying business which provides local services as the store in question is used by the hotel and is an integral part for the operation of the hotel.

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 Section 653B of the Act.

Reason:

The lands:

- Are zoned for solely or primarily for residential use.
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as evidenced by their city centre location/uses on the land.
- Satisfy section 653B (c)(i) of the TC Act as amended as they include/comprise a premises in use by a trade or profession (store of hotel) which provides a service to the existing or future residential community, which is liable to commercial rates, but which does not have the benefit of formal planning permission.
- Meet the other qualifying criteria 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:

- The site is used as a store for Cassidy Hotel and is subject to commercial rates.
- The lands were purchased in 1995 and was in use as a carpark associated with offices at the time.
- It is submitted that the site is an established commercial use.
- The store is unsuitable for residential use due to lack of connection to public infrastructure- roads and footpaths.

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 and therefore within scope of section 653B(a).

With respect to the use of lands (part of ground floor of No. 5 Rutland Place) as a store associated with Cassidys Hotel. The planning authority in the Submission Assessment noted that this store does not have the benefit of planning permission and concluded that the site is therefore within scope of RZLT. As noted on page 11 of the 2022 RZLT Guidelines 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'*. The appellants have submitted that No. 5 Rutland Row has an established commercial use by reference to a 1985 permission for retention of a warehouse/depot for storage of commercial good and vehicles. I note that a 1998 permission refers to a decision to refuse permission for a change of use to residential. The appellants argues that, therefore, the ground floor remains a permitted commercial use and its use therefore as a hotel store is authorised. The local authority determined that that lands were in scope as while the subject of commercial rates the use on does not have the benefit of formal planning permission. The Guidelines are clear in that they state that the use of the lands must be authorised. In this instance while I acknowledge that the use is the subject of commercial rates and may be used as a store associated with Cassidy Hotel, however based on the submission while the use may be established I have no evidence that it is authorised. Therefore the lands (store) are considered in scope as the lands do not meet the criteria for exclusion set out in section 653B (c)(i) and the grounds of appeal should be dismissed.

It is submitted that the appeal site, a c.35sq.m store on the ground floor of No. 5 Rutland Row, does not meet the requirement for access as the store is not served by a door onto Rutland Place and cannot be accessed from this façade. Access at present is via a gated private carpark. It is submitted that by virtue of the inadequate floor space, the lack of windows and inaccessibility to the site by public road and footpath, that this is not a space suitable or practical to develop for residential accommodation.

Pg. 24 of the Residential Zoned Land Tax Guidelines for Planning Authorities 2022 (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.

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 and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. The lands are comprised of urban plots that are bounded by urban streets and lanes in Dublin city centre and 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. On this basis the land, therefore, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

With regard to the size of the store/space. Section 653B does not include size/areas as a criteria for exclusion from the RZLT Maps and as such this ground of appeal should be dismissed.

Having regard to the foregoing I am of the view that 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)

Having regard to the foregoing I consider that the lands identified as RZLT 000142 (Parcel ID DCC000001639), meet the qualifying criteria set out in section 653B of the Taxes and consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

Conclusion

The lands identified as RZLT 000142 (Parcel ID DCC000001639), are located on lands where residential use is a permissible use, 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. No evidence has been provided that the use of these lands is authorised. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the zoning objective – Z1 that applies to this site.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000142 (Parcel ID DCC000001639), 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 000142 (Parcel ID DCC000001639), 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