



An
Bord
Pleanála

Inspector's Report ABP-317000-23.

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 the junction of the R139 Road and Hole in the Wall Road, Donaghmeade, Dublin 13.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000041.
Appellant	Veni Vidi Vici Ltd.
Inspector	Dáire McDevitt

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000041 (Parcel ID DCC000001284), are located at the southern end of the Hole in the Wall Road adjoining the roundabout with the R139 in Donaghmeade. The lands are bounded by a low wall with railings and contain a single storey structure. The lands are overgrown.

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. 3159/21 (ABP Ref. 313307-22) refers to a current appeal of a DCC grant of permission for a 7 to 13 storey building (72 apartments).

ABP Ref. 308134-20 refers to a decision to refuse permission for a SHD development comprising of the demolition of existing structure and construction of BTR shared living accommodation (122 no. shared accommodation units) in 5, 7 & 11 storey building and 23 car parking spaces.

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 there is currently a substantial Irish Water wayleave along the northern portion of the site and Irish Water have continued rights of access to maintain services on these lands. There is an existing pump house on the lands and given these existing operational services that severely constrain any re-development of these lands. It is considered that due to these infrastructural constraints on site, the lands should be considered not in scope.

Request that an assessment confirm that there is sufficient capacity available for such development and that there would be no significant works required to enable same to occur.

5.0 Determination by the Local Authority

The local authority determined that the site is 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:

- 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 evidence in consultation with Irish Water and by the grant of planning permission by Dublin City Council for residential development on the lands
- c) Satisfy the other relevant criteria under section 653B of the TC Act.

6.0 The Appeal

6.1. Grounds of Appeal

- RZLT is a punitive tax.
- There is a substantial Irish Water wayleave along the northern portion of the site. IW have a right of access. There is also a pump house on site.
- The DCC assessment has not considered if connection to services would require materially significant works or statutory consents should be considered out of scope.
- The lands have no agreed road access. The lands have no gas network, electricity, sewage, water connection, therefore are not serviced. Necessary

infrastructural works including the removal of third party sewers/water, provision of foul sewer drainage, water supply and utilities are significant, therefore the lands should be out of scope.

- Third party water main and sewer would be required to be removed and relocated which would require third party consent and substantial expenditure and planning.
- It is submitted that the appellant's lands do not satisfy the criteria of section 653B (b) of the Taxes Consolidation Act 1997 as amended.

7.0 Assessment

The grounds of appeal raised that the tax is considered punitive, this is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. 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"*.

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

The appellant has submitted that the lands should be scoped out due to the presence of a substantial Irish Water wayleave along the northern portion of the site and Irish Water have continued rights of access to maintain services on these lands. There is an existing pump house on the lands and given these existing operational services that severely constrain any re-development of these lands. And that the removal/relocation of third party infrastructure would require consents and be costly.

Correspondence on file from Uisce Eireann (UE) states the site is serviced by a watermain that runs in close proximity to the site's boundary along the Hole in the Wall Road. The site is serviced in terms of wastewater and UE are of the view that the presence of a pipeline and pumping station would not preclude development of the whole site.

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 queried by the appellants. 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.

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 respect to the sewer traversing a section of the site, the provision of a way leave and present of a pump house. I note the nature of the infrastructure, given the scale of which and the provision of a way leave that has been integrated in the layout

of a residential development on this site which is the subject of a current appeal. I do not consider that it would meet the criteria for exclusion under Section 653B on these grounds and therefore the appeal on these grounds should be dismissed.

With regard to the provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. 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 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.

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)

Having regard to the foregoing I consider that the lands identified as RZLT 000041 (Parcel ID DCC000001284), 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 000041 (Parcel ID DCC000001284), are located on lands zoned for residential purposes, it is reasonable to consider that the site has access to services.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000041 (Parcel ID DCC000001284), 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 site be retained on the map.

9.0 Reasons and Considerations

The lands identified as RZLT 000041 (Parcel ID DCC000001284), 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

3rd July 2023