



An
Bord
Pleanála

Inspector's Report

ABP-317906-23

Type of Appeal

Appeal under section 653J(2) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax.

Location

Lands at Horgan's Quay & Railway Street, Cork City.

Local Authority

Cork City Council.

Planning Authority Reg. Ref.

CRK-C245-RZLT-5.

Appellant(s)

HQ Developments Limited.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as CRK-C245-RZLT-5 (Land parcel ID CCLA00075191) refer to lands at Horgans' Quay and Railway Street in Cork city.

2.0 Zoning and other provisions

The relevant plan is the Cork City Development Plan 2022-2028.

The lands are zoned ZO 05 City Centre (Map 1) where residential use is permitted in principle.

3.0 Planning History

Applications of note include:

PA Ref. 1737563 (ABP 301249-18 appeal withdrawn) refers to the permitted mixed use development comprising hotel/residential/office and retail elements.

ABP 305278-19 refers to a SHD granted permission for 302 apartments and creche.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the supplemental map, requesting that lands be excluded on the basis that the lands form part of the wider Horgan's Quay mixed use development permitted under PA Ref. 17/37563 which is under construction. CIE are the current landowners and there is an agreement in place the HQ Developments Limited draw down title once individual buildings are completed. SHD application granted in 2019 (revised scheme from the 17/37563 includes phasing) with extensive elements completed and occupied to date. As such the lands are not vacant/idle and therefore not in scope of section 653B(a)(ii).

5.0 Determination by the Local Authority

The local authority determined that:

- The land is included in the Cork City Development Plan 2022-2028, in accordance with section 10(2)(a) of the Act and is further zoned (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- The lands satisfy section 653B(b) of the Taxes and Consolidation Act 1997, in that it is reasonable to consider that the land may have access, or 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.

(I note the refence to the Taxes and Consolidation Act and consider this a typo)

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The land is not vacant/idle therefore not within scope of section 653B(a)(ii).
- The development of the site is in accordance with the phasing submitted as compliance on the 25th August 2020 as required under condition No. 2 of 17/37653.
- The hotel, Office Block 1 and Carriage House and public realm improvements to be delivered in phase 1 with the remaining blocks to follow. At the date of the appeal the Hotel was completed and operational, Office Block 1 completed along with the public realm works. Future phases of office blocks under construction.
- The delivery of the scheme as a whole has been delayed due to Covid 19 and the war in Ukraine which are events outside the appellants' control.

7.0 Assessment

The comments raised in the appeal are noted. The local authority Determination is noted. No local authority report/assessment is on file.

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 lands are Zoned ZO05 City Centre where residential use is permissible and such are considered within scope of section 653B(a)(ii).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. The relevant land in this instance includes recently constructed buildings (some of which are operational), structures under construction and significant public realm improvements. The appellants have submitted that the lands are not vacant/idle as an extensive mixed use development is being delivered in accordance with the phasing programme for the site. (submitted as compliance relating to condition no. 2 of PA Ref. 17/37563).

Page 12 of the Guidelines set out that 'vacant or idle land' means land which, having regard only to a) development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land. And b) if the development is unauthorised. It further states "*if the development on the land complies with the first step and is not unauthorised, then it is not in scope and should not be included within the maps. Conversely, if development on the land complies with the first step but is unauthorised, then it is in scope and should be included on the maps*". On the basis of the information submitted the lands fall within the scope of vacant or idle asset out in the legislation.

Based on the information on file I have no evidence that the lands were 'vacant/idle' on the relevant dates or on the day the local authority made its Determination. The local authority has not provided an assessment of the appellant's initial submission on the draft RZLT map and have not justified why they consider it vacant/idle.

I note that section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 states “ where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope, subject to (iii) below”. Section 4.1.1 (iii) refers to services to be considered.

However, as set out above based on the information available it has not been clearly demonstrated that the lands identified as CRK-C245-RZLT-5 (Land parcel ID CCLA00075191) are in scope of section 653B (c)(ii) and as such do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended and the grounds of appeal relating to this matter should be upheld.

The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

Having reviewed the documentation on file, submissions and grounds of appeal, I conclude that the lands identified as CRK-C245-RZLT-5 (Land parcel ID CCLA00075191) having regard to section 653B(c)(ii) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. And I recommend that the board set aside the determination of the local authority and direct the local authority to omit the lands identified as CRK-C245-RZLT-5 (Land parcel ID CCLA00075191) from the final 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 lands identified as CRK-C245-RZLT-5 (Land parcel ID CCLA00075191) having regard to section 653B(c)(ii) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Dáire McDevitt

Senior Planning Inspector

17th October 2023