



An
Bord
Pleanála

Inspector's Report ABP-317928-23

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 Map

Location

Unit 1, Zenith Building, Spindrift Avenue, Royal Canal Park, Dublin 15, D15YY9K

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000187

Appellant(s)

Ballymore

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject site situated north of the Royal Canal and south and west of the Ratoath Road, in Pelletstown, Dublin 15 comprises a vacant commercial ground floor unit of a four-storey mixed-use building, located to the south of Spindrift Avenue at the junction with Hamilton Way.

2.0 Zoning and Other Provisions

- 2.1. The subject site is within Zone Z1 – ‘Sustainable Residential Neighbourhoods’ in the Dublin City Development Plan 2022-2028. This zoning objective seeks to protect, provide and improve residential amenities.
- 2.2. The site is located within the boundary of the Ashtown-Pelletstown Local Area Plan (LAP) which was adopted on 2nd December 2013, was due to expire at the end of 2019 but has been extended until December 2023. Chapter 4 of the LAP sets out the Development Strategy for the area.

3.0 Planning History

3.1. Lands including subject site

PA Ref. 3069/14 – Permission granted for inter alia 152 no. houses, 91 apartments, supermarket with offices above, 4 no. retail units, café, landscaping, open space, associated works at Royal Canal Park, Ratoath Road, Pelletstown, Dublin 15.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have the lands excluded from the RZLT map on the basis that the property is a permitted commercial unit which is presently vacant, is not an unauthorised use and therefore does not fall within the scope of section 653B (c) (i) of the legislation.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the site was in scope. The site is zoned for residential use, has access, or can be connected to public infrastructure and facilities

as evidenced by its location in the footprint of the city and the development of the lands. Furthermore, the lands do not qualify for an exemption under section 653B of the Taxes Consolidation Act 1997, as amended, on the basis that the lands are not in use as premises in which a trade or profession is being undertaken and which is liable to commercial rates, and it is reasonable to consider is not being used to provide services to residents of adjacent residential areas.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- The subject property which has the benefit of planning permission, was designed and built as a retail unit in response to a requirement of the Planning Authority to develop a mixed-use, high-density scheme.
- Permissible uses under the Z1 zoning objective include 'shop (local),' therefore the subject property does not constitute a non-conforming use.
- The site is within the boundary of the Ashtown – Pelletstown LAP. Chapter 4 of the LAP sets out the development strategy for the area. The Local Authority's policy is for the locality to be developed as a mixed-use area. The subject property is within a mixed-use building, as part of the aforementioned development strategy for the area.
- The subject property is affected in terms of its physical condition by matters to a sufficient extent to preclude the provision of dwellings. The property which was purposely designed as a retail unit is unsuitable for conversion to residential use. It accesses on to a busy street, with no private or communal open space, bin store or bike store. It does not enjoy any privacy; it is north facing and is overlooked.
- The property is the last remaining commercial unit in Royal Canal Park and when sold/let it will provide services to residents of neighbouring residential areas.

6.2. Planning Authority Response

- No response on file.

7.0 Assessment

- 7.1. The comments raised in the appeal submission are noted. The site identified for inclusion on the RZLT map is zoned for residential use and the Planning Authority determined that the site remain on the RZLT map. The site is within a built-up area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 7.2. Section 3.1.2 of the RZLT Guidelines provides guidance in terms of exclusions of lands as set out in the legislation, including lands referred to in section 653B (c), for reasons relating to contamination or the presence of known archaeological or historic remains.

The appellant contends that the subject premises by reason of its design and layout would render it unsuitable for conversion to residential use. I am of the view that the issue raised regarding the suitability or otherwise of the premises for conversion to residential use does not fall within the parameters of section 653B (c) or any of the legislative provisions relating to the RZLT process and as such cannot be considered in the appeal process. I consider that the site does satisfy the criteria for inclusion on the map set out in section 653B (c) of the Taxes Consolidation Act 1997, as amended.

- 7.3. The subject unit is presently vacant and as such, it is not in use as premises in which a trade or profession is being carried on. Given that the site is vacant, no commercial rates are being paid and no services are being provided to the adjoining residential areas. It is therefore apparent that the site does not qualify for an exemption under section 653B (c) (i) of the Taxes Consolidation Act 1997, as amended.
- 7.4. I therefore consider that the site should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development and it does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. 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

- 9.1. The appellant requested that their site be removed from the supplemental map on the basis that it is unsuitable for residential use by reason of its design and physical condition.
- 9.2. The site is within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The site does satisfy the criteria for inclusion on the map set out in section 653B (c) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my professional 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.

John Duffy
Planning Inspector

17th October 2023