



An
Bord
Pleanála

Inspector's Report ABP-317946-23

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

42a Parkgate Street, Dublin 8

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000178

Appellant(s)

The Davy Platform ICAV as the Alternative Investment Fund Manager to the Phoenix Sub-Fund

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The brownfield site is located at 42A Parkgate Street, Dublin 8. It is bound to the north by Parkgate Street, to the east by the junction of Sean Heuston Bridge and Parkgate Street, to the south by the River Liffey and to the west by an office and residential development. Heuston Station is on the opposite side of the River Liffey to the south of the site. The eastern portion of the site was previously used by Hickey's Fabrics. The large warehouse building on this site is in a derelict state and its windows are boarded up.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z5 – 'City Centre' in the Dublin City Development Plan 2022-2028. This zoning objective seeks to 'consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.' The lands are zoned for a mixture of uses including residential use.
- 2.2. The lands are located in a conservation area associated with the River Liffey.
- 2.3. The site contains a number of protected structures (Ref No. 6320), comprising riverside stone wall, turret at eastern end, square tower on river front and entrance stone arch on Parkgate Street.
- 2.4. The strip of land at the southern end of the site adjoining the river is zoned Z9 - Amenity / Open Space Lands / Green Network. These lands are not included in the Supplemental RZLT map.

3.0 Planning History

3.1. Subject lands

PL29S.310567 – Permission granted in 2021 for a SHD comprising 198 no. Build to Rent apartments in a 29 storey tower building and associated site works.

ABP-306569-20 – Split decision to grant permission for 321 no. Build To Rent units and refuse permission for Block A (160 no. apartments).

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have the lands removed from the RZLT map on the basis that they are not vacant or idle and that the landowner has been actively engaged in the planning system along with preparation for implementation of the permitted SHDs on the lands. The complexities involved in respect of the construction and implementation of the permissions were detailed. The submission also expressed opposition to the tax as a means of incentivising residential development.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site is in scope. The lands are zoned for a mixture of uses, including residential use, on or before 1st January 2022. They have access or can be connected to public infrastructure and facilities with sufficient service capacity as evidenced by their city centre location and planning history. The lands are vacant / idle as they are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to the land. Other qualifying criteria under section 653B are met.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- The lands are not vacant or idle. The warehouse is actively used for storage of materials in connection with the group's trade relating to development and construction in Dublin city. Warehouse storage is an established permissible use within the Z5 zoning objective. The site should be scoped out on the basis it is not vacant or idle.
- An authorised trade associated with the established warehouse use at this location has continued to operate and commercial rates are accordingly paid to the Local Authority.

- RZLT is an unsuitable mechanism for promoting house building as it fails to correct fundamental issues associated with housing delivery in the country. It is an unfair penalty on homebuilders.
- Landowner has actively engaged with the planning system and the protracted planning process. For instance, engagement has occurred with the Local Authority in the form of pre-planning consultations to explore possibilities for making further amendments to the permitted developments on the lands.
- Landowner has actively engaged in commencing preparations for implementation of the SHD permissions.
- The historic setting of the site, the development of one of the tallest residential buildings on a tight city centre site, requirements to conserve and protect structures and buildings of significant heritage value adds significant complexity to the implementation and construction programme of the permitted developments. Reference is made in the appeal to section 653B (C) of the legislation which, it is stated, 'makes some concession for sites challenged in this or similar manner.'
- Seeks suspension of RZLT liability for remaining duration of the permissions to support the implementation of the permissions.
- Appendix 1 includes evidence of payment of commercial rates in respect of the premises. Appendix 2 includes confirmation that the warehouse premises on the site is being used for storage purposes. Appendix 3 includes a copy of an invoice for security monitoring of the warehouse on the lands. Appendix 4 comprises a copy of a Site Enabling Works Commencement Notice in respect of ABP-306569-20.

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 a mixture of uses, including residential use and the Planning Authority determined that the site remain on the RZLT map. The site is within the city centre 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. Page 12 of the RZLT Guidelines set out that 'vacant or idle land' means land which, having regard only to 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.

Section 3.1.2 of the RZLT Guidelines relates to exclusions of particular lands from the map. In terms of determining whether lands are vacant or idle the Guidelines state the following:

Setting out the text in the legislation 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised 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; the first step is to determine if the development on the land is required for or integral to a trade or profession being carried out on the land or adjacent to the land.

I note Appendix 2 of the appeal which comprises correspondence from Tanick Development Unlimited confirming it is using the Parkgate Street warehouse to store construction materials purchased for future use on a Landsdowne Place Development in Ballsbridge. Having regard to this information my view is that this storage use is not required for, or integral to a trade or profession being carried out on the land or adjacent to the land and therefore the site is vacant or idle having regard to the 'vacant or idle land' meaning set out in the RZLT Guidelines. As such I consider that the site cannot avail of the exclusion as set out under section 653B (c) (ii) of the Taxes Consolidation Act 1997 as amended.

- 7.3. While the appeal suggests there may be scope to remove the site from the supplemental map due to the challenging nature of the site and associated complexities, the legislation does not offer any such exclusion criteria on this basis.

Section 653B (c) to which the appellant refers, relates to land where it is reasonable to consider is not affected, by reason of its physical condition, by matters to a sufficient degree, which would preclude the provision of dwellings including land in need of specific remediation for contamination and land which has significant known archaeological remains. No evidence has been presented which would suggest the subject lands should be removed from the supplemental map on account of the lands being contaminated or by reason of the presence of archaeological or historic remains. I note that while the lands are located within the zone of archaeological potential for the historic city of Dublin (DU018-020), there are no recorded archaeological sites on the lands or in the immediate area.

- 7.4. Section 3.2.3 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) states the following:

Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions.

Section 3.3.2 of the Guidelines also confirms that An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only.

The grounds of appeal include matters relating to planning permissions on the lands, commencement of development on the lands, engagement in the planning process, and opposition to the imposition of the tax on landowners. These grounds of appeal relate to matters outside of the qualifying criteria in section 653B; as such they cannot be considered in the appeal process and should be dismissed.

- 7.5. I therefore consider that the land should remain for inclusion on the Residential Land Tax Map given the site is zoned for a mixture of uses including residential development, that it is vacant or idle and that 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, inter alia, the lands are not vacant or idle and they are used for storage purposes.
- 9.2. The site is within the city centre 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