



An
Bord
Pleanála

Inspector's Report ABP-317949-23.

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	40-48 Back Lane, Dublin 8.
Local Authority	Dublin City Council.
Local Authority Reg. Ref.	RZLT 000173.
Appellant	Redcaps Developments Ltd.
Inspector	Dáire McDevitt.

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000173 (part of Parcel ID DCC000005038) are located at 40-48 Back Lane, Dublin 8. No. 40-48 Back Lane refers to a terrace of brick structures, consolidated for use as James Winstanley & Co. Ltd, the former Mother Redcaps's Market to the rear and a length of the City Wall which extends from Lamb Alley to John Dillon Street. Documentation submitted with the appeal refers to the lands as the 'Mother Redcaps complex' which is included in the NIAH.

2.0 Zoning

The lands are zoned Z5 City Centre in the Dublin City Development Plan 2022-2028. Residential is a permissible use under this land use zoning objective.

Located in an Architectural Conservation Area.

The lands are located within SDRA15 Liberties and Market Square.

The SDRA notes that the Mother Redcaps buildings offers an opportunity to be regenerated to provide for an ancillary or complementary use for the future reopening of the Iveagh markets.

3.0 Planning History

The grounds of appeal refer to PA Ref.4811/19 which was deemed invalid. This relates to an application by Iveagh Markets Hotels Limited for development at Iveagh Market Buildings, No. 20-27 Francis street & No. 20-21 Francis Street, No. 8 Lamb Alley, No. 1a and 2s John Dillon Street and No. 40-18 Back Lane, Dublin 8. Application was for development comprising of inter alia refurbishment of the Ivy Market Building and extensions/alterations to same, 2 no.1 no. hotel, hostel and extensive works. (full description available on DCC website or in correspondence submitted with the grounds of appeal).

PA 1238/07 (ABP Ref. PLS.222915) refers to permission for the redevelopment of the Iveagh market and Mother Redcaps site, an Aparthotel, food market and apartment block over mother redcaps.

1238/07 2 no. Extension of Durations to 2017.

PA Ref. 1606/04 refers to permission for the demolition of 1a and 2a John Dillon Street and 40-48 Back Lane (comprising public house, offices and former market and construction of mixed use development.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their lands removed from the supplemental map on the basis that the lands are not vacant/idle (public house), lands are the subject of multiple statutory designations and are contaminated. Residential development on the site would contravene many identified policies in the Dublin City Development Plan.

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 in Section 653B of the Act.

Reason:

The lands:

- Are zoned for a mixture of uses, including residential use.
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as evidence by their city centre location and past planning permissions on the land.
- Are not affected, in terms of their physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains.
- Are vacant/idle, as there is currently no active permitted use on the lands and the lands are not required for, or integral to. The operation of a trade or profession being carried out on, or adjacent to, the land.
- Meet the other qualifying criteria Section 653B of the TC Act, as amended.

6.0 The Appeal

6.1. Grounds of Appeal

An extensive appeal has been lodged which includes the following documentation:

- Copy of invalidation letter for planning ref. 4811/19. Applicant (Iveagh Markets Hotels Limited).
- Copy of submission by the appellants' to DCC dated 1st June 2023 relating to the supplemental map.
- Copy of Geo-Environmental Report relating to Site Preparation Works at Mother Redcaps, Back lane, Dublin 8 dated August 2017.

The grounds of appeal are summarised as follows:

- A copy of the decision was not furnished with the letter of notification. Furthermore the basis (reasons) for the decision have not been provided. Query the status of the person who signed the CE Order. A such no valid or appropriate decision or determination was made. It is also submitted that the foregoing prejudices the appellant's ability to formulate grounds of appeal.
- Reference to section 653(h)(i)TCA which requires local authority to evaluate submissions. Query if the appellant's submission on the draft map was considered by the local authority as it is submitted there is no evidence it was.
- Reference to legal cases relating to fair procedure and refers to the Boards power to convene an Oral Hearing which could address/cure deficiencies. Or alternatively the Board could annul the decision and exclude the appellant's lands from the RZLT map.
- No sight of internal reports until the 18th August 2023 following numerous requests. Which when received are the subject of extensive redactions. Query content of the internal reports (section not redacted) and if they apply to the appeal site.
- Reference to the planning history of the site.

- Refence to legal proceedings in the assessment report (JR 2020/217 refers to ownership of lands and consent to make an application and 4811/19 relates to a decision considered inadequate and incomplete).
- The lands are zoned Z5 'to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design and character'. And located within SDRA15 Liberties and Newmarket Square which requires a special local area plan or masterplan to be prepared.
- It is inconceivable that the designation of the lands for residential purposes could be consistent or reconcilable with the overall development plan provisions.
- The lands are contaminated with evidence of heavy metal, copper lead and slightly elevated levels of arsenic, hydrocarbon, contamination and elevated levels of zinc.
- The lands are occupied by a licensed premises which use is existing and established, which has over the past provided services to residents of the adjacent residential areas.
- The lands are not vacant/idle (refence to DCC VSL decision which was the subject of current JR proceedings under 2020/366JR).

6.2 Planning Authority comments

Comments received 12th October 2023 note comments raised in the appeal relating to administrative procedures that governed the RZLT process. DCC wish to confirm by return that there is a uniform administrative process in place for all RZLT submissions.

7.0 Assessment

The comments raised in the appeal are noted. The local authority outlined in its report why it has determined that the site is in scope for inclusion on the RZLT maps.

The appellants' have referred to the Board discretion to hold an oral hearing and request that this be considered. I note there is no provision for one in the legislation.

The grounds of appeal have raised a number of issues that are considered to be beyond the remit of this report, these include inter alia procedures at DCC relating to decision making, access to documents and nature of the documents when made available. 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 Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022 clearly sets out in section 3.3.2 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".

The appellants 'have also submitted that the lands are zoned Z5 'to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design and character'. And located within SDRA15 Liberties and Newmarket Square which requires a special local area plan or masterplan to be prepared. And therefore it is inconceivable that the designation of the lands for residential purposes could be consistent or reconcilable with the overall development plan provisions. Whether the uses on the lands currently (whether they have the benefit or not of planning permission) and whether these comply with or are seen to achieve the current zoning objective does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

The appellants' have referred to current judicial review proceedings, which include one relating to a DCC decision on VSL for the lands. Judicial review proceedings are not grounds for exclusion under section 653B of the Taxes Consolidation Act 1997 as amended. I address the issue of vacant/idle below.

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 Z5 where residential use is permitted in principle and therefore 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 appellant has argued that the lands is not vacant/idle as the lands are occupied by a licensed premises which use is existing and established, which has over the past provided services to residents of the adjacent residential areas. DCC determined that the lands are vacant/idle and refer to VS1077 as it is submitted that the property is vacant/not in use.

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 not 'vacant/idle' on the relevant dates or on the day the local authority made its Determination. I acknowledge that the public house/licenced premises is an established, however based on the information before me I have no evidence the public house and associated lands are not vacant/idle at present or providing a services to the adjacent residential community. The grounds of appeal submit that the licensed premises is an 'established use' therefore the lands are not idle and that the licensed premises provided a service in the past.

The fact that there are JR proceeding against DCC relating to VSL for these lands does not in itself determine that the lands are not vacant/idle or that the Board is precluded from making a decision on the RZLT until this matter is resolved. The RZLTs are reviewed on an annual basis and if circumstances change and it is clearly demonstrated that the lands are not vacant/idle then they could be removed from subsequent maps. However for the current appeal based on the information available I have no evidence that the lands were not vacant/idle on the relevant dates or on the date the local authority made its Determination. Therefore should be retained on the RZLT map as it has not been clearly demonstrated that the lands do not meet the criteria for inclusion under section 653B(c)(ii).

The grounds of appeal submit that the physical features (contaminated lands and presence of archaeology), whether alone or cumulatively, affect the site to a sufficient extent to preclude the provision of dwellings. Based on the information submitted by the appellants I do not consider that the lands are contaminated to the extent that ' it is reasonable to consider the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings'. With regard to the presence of archaeology on site. The lands are located within Dublin City Centre and any development of lands will encounter archaeology The manner in which it is addressed would be subject to appropriate investigations and/or planning conditions which I note have been considered in the past for historical applications on the lands and do not necessarily affect the site to a sufficient extent to preclude the provision of dwellings.

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

8.0 Conclusion & Recommendation

The lands identified as RZLT 000173 (part of Parcel ID DCC000005038) are located on lands zoned Z5 where residential use is a permissible use land, 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 in principle for residential purposes. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. The lands identified as RZLT 000173 (part of Parcel ID DCC000005038) 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 recommend that the board confirm the determination of the local authority relating to the remainder of the lands direct the local authority to retain the lands identified as RZLT 000173 (part of Parcel ID DCC000005038) on 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 RZLT 000173 (part of Parcel ID DCC000005038) are located on lands zoned Z5 where residential use is a permissible use 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

17th October 2023