



An
Bord
Pleanála

Inspector's Report ABP-317950-23

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	Lands at Rathborne Avenue, Ashtown-Pelletstown, Dublin 15
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	RZLT-000190
Appellant(s)	Castlethorn Developments Rathborne UC (CDR) and the Rathborne Partners Limited Partnership acting by its General Partner Rathborne Boulevard Residential GP DAC (LP) (Collectively the Owners)
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The subject site at Ashtown-Pelletstown, Dublin 15 is located immediately north of the Royal Canal. The site comprises two sections, with the northern component accommodating 92 no. dwellings. The southern portion of the lands which adjoin the Royal Canal is undeveloped. The area is characterised by residential and commercial development.

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 lands are located within the boundary of the Ashtown-Pelletstown Local Area Plan (LAP) which was adopted on 2nd December 2013 and 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.
- 2.3. Having regard to the built-up nature of the area and its planning history, I consider the site is not affected by issues to a sufficient extent which would preclude the provision of houses, including contamination or the presence of known archaeological or historic remains.

3.0 Planning History

Subject lands

- 3.1. TR29N.321162 - Alterations to Block 1 to 6 of previously permitted SHD application ABP-307656-21. Decision: Alter decision - Not a material Alteration (No EIS).
- 3.2. TA29N.307656 – SHD application granted for 725 apartments, creche and associated works in 2020.
- 3.3. PL29N.246373 / PA Ref. 3666/15 – Permission granted for 318 dwellings, a creche and public park. An extension of duration of this permission was granted until 18th December 2026 (PA Ref. 3666/15/X1 refers).

3.4. PA Reg. Ref. 2596/20 granted permission for amendments to the development permitted under PA Ref. 3666/15 (ABP Ref. PL29N.246373) concerning the northern portion of the site.

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 every reasonable effort has been made to advance development on the southern part of the site. Imposition of the tax is inappropriate and unwarranted and the site cannot be reasonably considered as vacant or idle.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site was in scope. The lands were zoned solely or primarily for residential use on 14th December 2022 when the Dublin City Development Plan 2022-2028 came into effect. The lands were serviced on or before 1st January 2022 and satisfied all other relevant criteria on or before 1st January 2022.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- Opposition expressed to the imposition of RZLT which is considered to be a punitive, unfair and inequitable tax measure likely to mitigate against timely housing delivery.
- Acknowledge that the majority of lands are zoned to accommodate residential development.
- Part of the subject lands are zoned Z9 – Open Space. It is unclear whether the Supplemental Maps do or do not include a narrow strip of lands along the canal edge. These lands are not in scope as the criteria under section 653B (a) (i) (a)

are not met. This land is identified as being part of a future extension of a greenway and should be excluded.

- Request that an assessment of the lands are provided in the context of how it meets the RZLT criteria and service capacity.
- Detailed summary of the planning history of the lands is provided.
- Various technical, economic and commercial considerations outside the landowner's control identified. These militated against the commencement of development any earlier than that which occurred.
- A temporary pedestrian link traverses the lands beneath which is an attenuation tank serving housing on the northern part of the site. As these lands provide a pedestrian link, they are not vacant or idle and should be considered not in scope.

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. In this context Uisce Eireann has confirmed that both a sewer and a trunk water main exist in the public road proximate to the site. There is also a watermain that runs along the boundary of Rathborne Avenue. The Drainage Section of the Local Authority has confirmed there is existing surface water sewers on Rathborne Avenue designed to serve the wider Pelletstown lands including the subject site. Access to the site is from Rathborne Avenue to the north and Royal Canal Avenue to the east.
- 7.3. Having reviewed the land parcel pertaining to the subject lands on the Supplemental Map (Land Parcel ID DCC000005126 refers) as published by the Department of Housing, Local Government and Heritage on the datagov.ie website I am satisfied

that the supplemental map does not include the narrow strip of Z9 zoned land along the canal edge, and that it incorporates Z1 zoned lands only, as it relates to the subject lands.

7.4. The appellant makes the point that the lands are not in scope as they are not vacant or idle. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply.

7.5 I note that the northern part of the lands accommodate residential dwellings which would be liable for Local Property Tax. If the site is situated in the curtilage of a residential property, the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) state on page 8 that:

Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation).

7.6 Section 3.2.3 of the RZLT Guidelines state that:

'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. Furthermore the size of the landholding, ownership of the land by private, public or semi-state bodies, lack of knowledge of ownership or transfer of ownership should not be considered.'

A number of the grounds of appeal, including issues relating to planning permission, circumstances leading to delays in development of the land, the ownership of the land, and expressed opposition to the tax are not matters which fall within the criteria for exclusion from the map as per Section 653B of the Act, and as such cannot be considered in the appeal process.

7.7 I consider that the lands should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development and they do 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 lands be retained on the map.

9.0 Reasons and Considerations

9.1. 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