



An
Bord
Pleanála

Inspector's Report ABP-320338-24

Type of Appeal

Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map

Location

1 – 4 Brandon Terrace, Dublin 8

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000218

Appellant(s)

St. James's Hospital

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The brownfield lands are located east of the St. James's Hospital campus and comprise a cleared site with construction hoarding along Brandon Terrace / Basin View and palisade fencing along the remaining site perimeter at James's Walk. The site previously accommodated a factory and housing.
- 1.2. The lands comprise one Land Parcel on the final RZLT Map; Parcel ID DCC000064122 refers.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z10 – 'Inner Suburban and Inner City Sustainable Mixed-Uses' in the Dublin City Development Plan 2022-2028 (Zoning map E refers). This zoning objective seeks 'To consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses.' The lands are zoned for a mixture of uses including residential use.
- 2.2. Adjoining, but outside Land Parcel ID DCC000064122, is a strip of land along / bounding the public road, zoned Z9 'Amenity / Open Space Lands / Green Network' where residential development is not permitted. This area of land is not included in the RZLT final map.
- 2.3. The Kilmainham to Thomas Street Active Travel Route adjoins the subject lands to the west but does not impact the Z10 zoned lands as included on the RZLT map.
- 2.4. The appeal lands are located within the boundary of the Liberties and Newmarket Square Strategic Development Regeneration Area (SDRA).

3.0 Planning History

An Bord Pleanála Ref. VX29S.320027315488-23 (Planning Authority Ref. VS0043) refers to a current vacant site levy appeal relating to 1 – 4 Brandon Terrace due for decision by 30th October 2024.

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 final RZLT map on the basis that the site forms part of the strategic development of St. James's Hospital campus and that tax liabilities within state bodies should be reviewed and excluded. Furthermore it is stated that the hospital will be seeking to redevelop the site in accordance with the Z10 zoning objective and that buildings for the health, safety or welfare of the public are permissible uses under the zoning objective. Finally it is noted that a large portion of the site is a protected public realm amenity and is identified under the Council's mobility strategy / cycle network plan as route 7 from Grand Canal via Thomas Street to Dame Street.

5.0 Determination by the Local Authority

- 5.1 The Local Authority determined that the lands satisfy the relevant criteria as set out in section 653B on the basis that they:
- 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 evidenced by consultation with Uisce Éireann and the Council's Transportation Planning Division and having regard to the site's location within the inner city / its planning history
 - Are vacant / idle (in accordance with the definition provided for in the Act), as the lands are vacant and there is currently no recorded authorised 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 of section 653B of the Taxes Consolidation Act, as amended.

6.0 The Appeal

6.1 Grounds of Appeal

The following points are made in support of the appeal:

- The lands are a development site for St. James's Hospital and form part of its strategic development plan for the hospital campus and for the development of hospital functions in support of the healthcare strategy, Sláintecare.
- Significant investment has been committed to enabling works to date.
- The lands are not vacant or idle, being currently used in connection with the operations and activities of the hospital. In this regard the site accommodates storage containers and building materials.
- Under the Z10 zoning objective primary health care centre and medical and related consultants are permissible uses.
- The lands were acquired specifically for healthcare purposes and cannot be activated for housing in either the short or long terms.
- There is a requirement for major utility upgrades in the area, particularly in the ESB network. In this context there is a need for a 110 KV sub-station, with the subject site being a potential location for such infrastructure. Having regard to this the need for network upgrades the subject lands do not fully satisfy section 653B.
- In terms of 653B(c)(i) the lands do not relate to the carrying out of a trade or profession, they are not liable for commercial rates and they provide services to residents of adjoining residential areas.
- RZLT Guidelines state it is reasonable that land required for infrastructure and community services (including for the provision of healthcare) is excluded from RZLT.

7.0 **Assessment**

- 7.1 The content of the appeal submission is 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 urban area with services available and no water and / or wastewater capacity reasons have been identified that would prevent the development of these lands for residential purposes. The appellant notes that the subject lands satisfy section 653B in respect of water supply, wastewater treatment capacity and access to road and footpath infrastructure.

7.2 The grounds of appeal consider that there is a need for significant upgrading of the ESB network in the area. While this may be the case, it is noted from the appellant's submission that upgrades to the network are being planned. A need for network upgrades would not, under normal circumstances, require the exclusion of lands from the RZLT map. I consider that this issue would not impede the delivery of housing on the subject lands.

7.3 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.

The appellant states the land is currently used in connection with the activities and operations of the hospital, specifically, inter alia, for the storage of artefacts and building materials salvaged from the now demolished hospital chapel and from the James's Street hospital entrance on foot of road widening and footpath provision in that area. In my view the 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. I also note that there is no recorded authorised use on these lands. Having regard to the foregoing 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.

7.4 Referring to the RZLT Guidelines, the appellant contends that the appeal lands should be excluded from the scope of the RZLT as they are required by St. James's Hospital for healthcare purposes, including for the development of hospital functions in accordance with its own strategic plan and Sláintecare. I note the exemption set out under section 653B(c)(iii)(I) relating to social and community infrastructure and facilities, including infrastructure and facilities used for the provision of healthcare.

Page 11 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022 states 'where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I)-(IV) by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the lands area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out.' In this instance the lands are zoned Z10 – 'Inner Suburban and Inner City Sustainable Mixed-Uses' in the Dublin City Development Plan 2022-2028 where residential use is permissible. I note that the current Development Plan has not specifically identified the subject lands for healthcare use and as such, in accordance with the Guidelines, I consider that the land parcel is in scope and that it does not meet the provision of section 653B(c) for exclusion from the map.

7.5 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 remaining grounds of appeal include matters relating, inter alia, to the redevelopment of the lands. Such matters are outside the qualifying criteria in section 653B; as such they cannot be considered in the appeal process.

7.6 Having regard to the foregoing I consider that the land should remain for inclusion on the final RZLT 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

I consider that the lands identified as Parcel ID DCC000064122 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final map.

9.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Parcel ID DCC000064122 on the RZLT Final Map zoned Z10 'Inner Suburban and Inner City Sustainable Mixed-Uses' are considered to be within scope of Section 653B(a). The lands are located within an established urban area and they can be considered to be vacant or idle within the meaning of section 653B(c)(ii) of the Act. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the Z10 zoning objective that applies to these lands. The lands do not avail of the exemption of section 653B(c)(iii)(l) relating to social and community infrastructure and facilities, including infrastructure and facilities used for the provision of healthcare.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000218

Appeal by St. James's Hospital in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Dublin City Council on the 21st day of June 2024 in respect of the site described below.

Lands at: 1 – 4 Brandon Terrace, Dublin 8

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID DCC000064122 on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Parcel ID DCC000064122 are zoned Z10 'Inner Suburban and Inner City Sustainable Mixed-Uses' and are considered to be in scope of section 653B(a). The lands are located within an established urban area and they can be considered to be vacant or idle within the meaning of section 653B(c)(ii) of the Act. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use zoning objective that applies to these lands. The lands do not avail of the exemption of section 653B(c)(iii)(l) relating to social and community infrastructure and facilities, including infrastructure and facilities used for the provision of healthcare.

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

19th September 2024