



An
Bord
Pleanála

Inspector's Report ABP-320342-24

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

Former RTE lands, Montrose, Donnybrook, Dublin 4

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000215

Appellant(s)

Cairn Homes Montrose Limited

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The lands are located west of the main RTE campus buildings and comprise two surface car parks adjoining the RTE Radio Centre at the eastern part of the lands, a centrally located open space area and several existing structures including a disused studio set and buildings including Mount Errol House (protected structure), associated stables and the former RTE Sports and Social Club building.
- 1.2. The lands comprise two Land Parcels on the final RZLT Map; Parcel IDs DCC000064086 and DCC000063958.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z12 – ‘Institutional Land (Future Development Potential)’ in the Dublin City Development Plan 2022-2028 (Zoning map H refers). This zoning objective seeks ‘To ensure existing environmental amenities are protected in the predominantly residential future use of these lands.’ The lands are zoned for a mixture of uses including residential use.
- 2.2. Section 14.7.12 of the Development Plan states the following: ‘Where lands zoned Z12 are to be developed, a minimum of 25% of the site will be required to be retained as accessible public open space to safeguard the essential open character and landscape features of the site. Where such lands are redeveloped, the predominant land-use will be residential.’

3.0 Planning History

3.1. RZLT Appeal

An Bord Pleanála Ref. ABP-316811-23 / Planning Authority Ref. RZLT00004 refers to a September 2023 decision to confirm the determination of the local authority to include lands at the former RTE Campus, Montrose, Stillorgan Road (R138) and Ailesbury Close, Donnybrook, Dublin 4 in the RZLT MAP.

Other Applications / Appeals

There is a lengthy planning history associated with the subject lands. Noteworthy cases include the following:

An Bord Pleanála Ref. 315488-23 / Planning Authority Ref. LRD 6003/22-S3 refers to a July 2023 split decision (Block 5 omitted) for a Large-scale Residential Application (LRD) application for, inter alia, 688 apartments, hotel, childcare facilities, amenities and associated works.

An Bord Pleanála Ref. TA29S.307239-20 refers to a grant of permission for a SHD development comprising 614 residential units, childcare facilities and associated works. This decision was quashed following judicial review proceedings.

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 they are ‘vacant or idle’ pending the receipt of planning permission for Block 5 and as such the lands should be excluded from the RZLT map until final grant of permission (free of legal challenge) has been secured. Alternatively, the appellant requests that the effective date for the tax liability is taken 24 months subsequent to a final grant of permission to enable financing, viability testing and pre-commencement compliance procedures to be completed, whichever is the latter.

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 solely or primarily for residential use
- Have access or can be connected to public infrastructure and facilities
- Satisfy the other relevant 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:

- Reference is made to the planning history of the site, specifically An Bord Pleanála Ref. 315488-23 / Planning Authority Ref. LRD 6003/22-S3. The appellant states it has not been possible to implement the balance of that permission without securing permission for reinstatement of Block 5.
- It is intended that a new LRD application will be lodged in Q1 2025 for reinstatement of Block 5 on the lands, albeit with reduced height, amended design and potentially amended uses. However there is a high risk of litigation against a future grant of permission, having regard to the history of litigation against a previous permission. It is the appellant's experience that decisions subject to judicial review can take up to 18 months.
- Under Section 653AF of the Taxes Consolidation Act a new provision allows deferral of the RZLT tax liability where the site is subject to a third party appeal or judicial review.
- Given the likely risk of objection to the forthcoming application and consequential delays to implementing the wider permission, there continues to be impediments in securing the development of these lands, implying the application of RZLT is inappropriate and unreasonable.

The appeal includes the following Appendices:

Appendix 1: Site Location Map

Appendix 2: Copy of submission to the Local Authority

7.0 Assessment

- 7.1 The content of the appeal submission is noted. The land identified for inclusion on the RZLT map is zoned for a mixture of uses, including residential use and the Local Authority determined that the land remain on the RZLT map. The land is within the 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. 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 Z12 Institutional Land (Future Development Potential) in the Dublin City Development Plan 2022-2028 and therefore within scope of section 653B(a).
- 7.2 Section 653B(c)(ii) sets out that land referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. Page 12 of the 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. The relevant land in this instance includes, inter alia, buildings / structures, areas of hard standing and a disused studio set. The land is not required for or integral to a trade or profession being carried out on the land or adjacent land. On the basis of the information submitted, the appeal lands fall within the scope of vacant or idle as set out in the legislation and meet the criteria for inclusion under section 653B(c)(ii).
- 7.3 Section 653AF of the Taxes Consolidation Act 1997 as amended provides for a deferral of RZLT where a grant of planning permission in respect of land within the scope of the tax is the subject of an appeal or request for judicial review by a third party, who is unconnected with the applicant or, if different, the owner of such land. This provision does not involve removal of the lands from the RZLT final map. Deferral of RZLT is a matter for the Revenue Commissioners. I note there is

presently no third party appeal or judicial review proceedings relating to the appeal lands.

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 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, inter alia, to planning permissions on the lands and commencement of development on the lands. 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.

- 7.4 The appeal lands do not fall within any of the seven use-based exemptions set out under section 653B(c)(iii) of the Taxes Consolidation Act 1997 as amended. In terms of section 653B(c)(iv) the appeal lands are not subject to a statutory designation that may preclude development and as such this exemption does not apply to these lands. In relation to section 653B(c)(v) no derelict sites levy is payable on the lands and therefore this exemption does not apply.
- 7.5 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 the site can be considered vacant or idle within the meaning of section 653B(c)(ii) of the Act, 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 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

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 DCC000064086 and DCC000063958 on the RZLT Final Map zoned Z12-‘Institutional Land (Future Development Potential)’ are considered to be within scope of Section 653B(a). An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only. The lands are located within an established urban area and are 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 Z12 zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000215

Appeal by the Cairn Homes Montrose Ltd. 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: Former RTE lands, Montrose, Donnybrook, Dublin 4

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 IDs DCC000064086 and DCC000063958 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 DCC000064086 and DCC000063958 on the RZLT Final Map zoned Z12-‘Institutional Land (Future Development Potential)’ are considered to be within scope of Section 653B(a). An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only. The lands are located within an established urban area and are 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 Z12 zoning objective that applies to these lands.

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