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Bord  
Pleanála

## Inspector's Report ABP-320370-24

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### 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

### Location

Rear of 18b Fairview Avenue Lower, Fairview, Dublin 3.

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

RZLT-000223

### Appellant(s)

Newcourt Pensioneer Trustees Limited as trustee for Michael Tuite and Ciaran Tuite.

### Inspector

Fergal Ó Bric

## **1.0 Site Location and Description**

- 1.1. The subject site comprises a stated area of 0.0912 hectares, contains an irregular shaped area of land located to the east of Fairview Avenue Lower, Fairview, on the northside of Dublin City Centre. The site forms part of a larger landholding. A large building is located on the site and is set back from the street front. Between the building and the edge of the site is a surface car parking area which is fenced along the street frontage. The parcel id number associated with the subject lands is DCC000064096.
- 1.2. The surrounding area consists of mostly residential properties with mixed use development located to the south of the site.

## **2.0 Zoning and Other Provisions**

- 2.1. The site is zoned Z4 – Key Urban Villages/ Urban Villages in the Dublin City Development Plan 2022 - 2028. The zoning objective is “To provide for and improve mixed service facilities” Residential development is permitted in principle on Z4 zoned lands.

## **3.0 Planning History**

- 3.1. PA reference number RZLT-000027, in 2023, Dublin City Council determined that the lands should be included within the RZLT map. ABP reference 316567-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified under planning reference number RZLT000027 on the RZLT map.

## **4.0 Submission to the Local Authority**

- 4.1. The appellants made a submission to the Local Authority seeking to have their lands removed from the RZLT map on the basis that these properties are in commercial use by a motor company, and secondly a number of car parking spaces along the southern boundary of the site, adjoining the right of way have been leased by local businesses since the early 1990's.

## **5.0 Determination by the Local Authority**

The local authority determined to include the site on the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

The reasons set out by the Local Authority are as follows:

The lands:

- a) Are zoned for a mixture of uses, including residential use.
- b) Have access to, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as evidenced by the planning history on the site and location within the city,
- c) Area vacant/idle (in accordance with the definition provided for in the Act) as 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.
- d) Satisfy the other relevant criteria under section 653B of the Taxes Consolidation Act, 1997, as amended.

## **6.0 The Appeal**

### **Grounds of Appeal**

The following points were made in support of the appeal:

- The appellants accept that the site is suitably zoned for residential development.
- The site can be fully serviced.
- The lands should not be included on the maps as there is a commercial business in operation on this site since May 2015. The site is also used as a car parking/ storage lot. Some of the car parking spaces are in use by local businesses in this vicinity. The building on site is partly used for the running of a commercial business. Details are provided on file.
- There is a right of way that bisects the site.

- A formal planning application for a mixed-use development, incorporating twenty five residential units on site has been submitted to the planning authority.

## **7.0 Planning Authority Response**

The local authority made no comment in relation to this appeal.

## **8.0 Assessment**

8.1 The comments raised in the appeal submission are noted. The site identified for inclusion on the RZLT map and is zoned Z4 – ‘Key urban villages/urban villages’ in the Dublin City Development Plan 2022-2028. The Z4 mixed use zoning objective pertaining to the lands sets out that residential development is permissible in principle. The Local Authority determined that the site should remain on the RZLT map. The Local Authority set out that 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.

8.2 Section 653B (ii) of the Taxes Consolidation Act relates to lands zoned for a mixture of uses (including Z4) including residential use unless it is reasonable to consider that the land is vacant or idle. I note the submission made in support of the appeal and in particular the details of the commercial leases that apply to this site. I consider that the leases that apply to the site are legal matters and are not relevant to this assessment under the provisions of the Taxes Consolidation Act 1997, as amended. The use of part of the lands as car parking by businesses in the area, is not a reason for exclusion from the maps, as set out within Section 653B(c) of the Taxes Consolidation Act 1997, as amended.

8.3 Section 653B of the Taxes Consolidation Act 1997, as amended clearly sets out that land in scope will be zoned for residential development or a mixture or uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 of the RZLT Guidelines sets out the following: iii) Services to be considered of the guidelines state

*that “in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope”.*

8.4 The lands have direct road frontage onto Fairview Avenue Lower to the west. The Local Authority state that there is a public footpath along both roads and street lighting adjacent to the lands. The Local Authority set out that there is: Access to the piped water services adjacent to the subject lands. The Local Authority state that given the site location within the inner city and within a built up residential and commercial zone, it is reasonable to consider that the lands have access, and connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage, water supply necessary for dwellings to be developed and with sufficient service capacity available for such development. The appellants have not clearly demonstrated based on the information submitted that the uses on site have the benefit of a valid planning permission. The site is considered to be vacant or idle as the commercial uses on site do not relate to an authorised development, is which a trade or profession is being carried on, that is liable to commercial rates, and that it is reasonable to consider is being used to provide services to residents of adjacent residential areas as per Section 653B c) of the taxes Consolidation Act, 1997, as amended. I consider the Z4-mixed-use zoned lands fall within scope as residential development is permissible in principle on mixed use zoned lands as set out within the land use zoning matrix of the current Dublin City Development Plan. I would concur with

the stance of the local authority, given that a residential use is permissible in principle on the Z4-mixed use zoned lands.

8.5 The Planning Authority stated that the appellants have not provided documentary evidence that the commercial uses on the lands are authorised. and, therefore, the lands cannot be considered to be exempt from inclusion within the final RZLT maps.

8.6 I note the comments regarding the right of way on the site, however this is not a reason for exclusion from the RZLT map as per Section 653B c) of the Taxes Consolidation Act, 1997, as amended.

8.7 I, therefore, consider that the site, should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development and there are no reasons as to why residential development cannot take place here. The appellants have not demonstrated that the lands should be deemed out of scope as per the provisions of Section 653B c) (i) of the Taxes Consolidation Act 1997, as amended.

## **9.0 Recommendation**

I recommend that the board confirm the determination of the Local Authority and that the indicated site be retained on the map,

## **10.0 Reasons and Considerations**

The lands identified as RZ:LT-000223, parcel ID number DCC000064096 are located on Z4-Key Urban Villages/urban villages zoned lands identified within the current Dublin City Development Plan where a residential use is permissible in principle. The appellants have not clearly demonstrated based on the information submitted, that the commercial uses within the lands have the benefit of a valid planning permission and are, therefore, considered within the scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The lands are located 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 in accordance with the Z4 mixed use zoning objective that applies to these lands.

## 11.0 Recommended Draft Board Order

**Taxes Consolidation Act 1997 as amended.**

**Planning Authority:** Dublin City Council

**Local Authority Reference Number:** RZ:LT-000223

**Appeal** Newcourt Pensioner Trustees Limited as trustees for Michael Tuite and Ciaran Tuite in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the final Residential Zoned Land Tax Map by Dublin City Council on the 17<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Rear of 18b Fairview Avenue Lower, Fairview, Dublin 3. .

### **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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number DCC000064096 and Local Authority reference number RZLT-000223 should remain on the RZLT map.

### **Reasons and Considerations**

The lands identified as RZ:LT-000223, parcel ID number DCC000064096 are located on Z4-Key Urban Villages/urban villages zoned lands identified within the current Dublin City Development Plan where a residential use is permissible in principle. The appellants have not clearly demonstrated based on the information submitted, that the commercial uses within the lands have the benefit of a valid planning permission and are, therefore, considered within the scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The lands are located 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 in accordance with the Z4 mixed use zoning objective that applies to these lands.

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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.

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Fergal Ó Bric  
Planning Inspectorate

26th day of September 2024