



An
Bord
Pleanála

Inspector's Report ABP-320372-24

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

Location

Lands at 17-20 Marlborough Street and 19-23 Marlborough Place, extending onto Potter's Alley, Dublin 1

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000235

Appellant(s)

Irish Life Assurances PLC.

Site Inspection

26th day of September 2024

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject lands are located in Dublin city centre and comprise properties along Marlborough Street and Marlborough Place and extending onto Potter's Alley in Dublin 1 adjoining the Irish Life Centre. The lands are identified by planning reference number RZLT-000235 and parcel ID number DCC 000064109. The lands are undeveloped, with hoarding providing a boundary and hardstanding in place. The site is located to the south of Marlborough Place and east of Marlborough Street. The Luas Green Line is located adjacent to the site. The lands comprise an area of c. 0.1 hectares.
- 1.2. The surrounding area, located within the city centre consists of mixed use mostly commercial development. The Irish Life Centre, which is currently undergoing redevelopment is located to the south/ southeast of the subject lands.

2.0 Zoning and Other Provisions

- 2.1. The site is zoned Z5 – City Centre in the Dublin City Development Plan 2022 - 2028. Residential development is permitted in principle on these lands.

3.0 Planning History

Planning reference RZLT-000091, in 2023, Dublin City Council determined that the lands be included within the RZLT map. This determination was upheld by the Board under board reference number 316965-23. This decision was the subject of Judicial Review proceedings which were struck out by the High Court on the basis that, inter alia, a deferral in the liability to tax for a one-year period rendered the proceedings moot.

Planning reference 5503/22- for re-development and renovation works at Block D and Block A which form part of the Irish Life Centre at Abbey St Lower, Dublin 1. The appellants set out that these works are currently being undertaken. This planning permission will expire in June 2028.

Planning reference 3622/21 for re-development and renovation works at Blocks 3A and 3B of the Irish Life Centre at Abbey St Lower, Dublin 1. The appellants set out that these works are currently being undertaken. This planning permission will expire in April 2027.

PA Ref. 4537/07 refers to a February 2008 decision to grant permission for the demolition of 19-23 Marlborough Place and 17 – 20 Marlborough Street and the construction of a seven-storey office building on this site. This permission was modified by PA Ref. 3785/08. The buildings were demolished, and no other works were subsequently carried out.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the RZLT map on the basis that these lands are not vacant or idle, are in use for the re-development on the overall wider landholding owned by Irish Life Assurances Ltd. The subject lands form part of the wider Irish Life centre development. They use of lands as a construction compound associated with the renovation works at the Irish Life Centre permitted under planning reference 3622/21 and 5503/22 until late 2025 or early 2026 and for deliveries, shredding and administration purposes. These uses and construction related activities are exempted development under permissions granted and the exempted development. provisions included within the Planning and Development Regulations, 2001, as amended.

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,
- c) Area vacant/idle, as the lands are levelled and hoarded with no construction activity at the site (confirmed in the submission as having ceased works in May 2022) and are not considered to be required for or integral to the operation use of the lands for temporary and/or ad hoc uses demonstrate that the lands are not required for, or integral to, the operation of a trade or profession being carried on, or adjacent to, the land.
- d) Meet the other relevant criteria under Section 653B of the Taxes Consolidation Act, 1997, as amended.

I note that the reasons for scoping in the lands set out by DCC in their notification of determination dated 27th June 2024 differ from the reasons set out by the city planning officer in her report dated 18th day of June 2024.

6.0 The Appeal

Grounds of Appeal

The following points were made in support of the appeal:

- The land is not vacant, it has a use for receipt of deliveries, administration purposes and shredding of sensitive documents and as a building compound for storage of construction materials and construction machinery associated with the re-development of the overall Irish Life site.
- The site forms part of the overall Irish Life complex, which comprises a total area of two hectares.
- Redevelopment works are ongoing within other parts of the overall site (as set out within the planning history).
- The loading bay is the main compound for all deliveries relating to the Irish Life groups business on campus during the re-development of Block 3.
- This area is essential for the operations of the Irish Life business during the redevelopment process. The loading area will eventually be located within the new block 3, post development, which is stated to be in late 2025 or early 2026,

- The permitted works occupy the entirety of the remainder of the subject site, as accommodation and storage for development works until 2025/2026, at which point additional works, currently being planned, will likely be awaiting continued use of the subject site as a construction compound.
- The site is not currently vacant, there are active uses on the land which are required for the operation of a trade or profession being carried out on, or adjacent to the lands and the redevelopment works on the adjacent lands were permitted by DCC. The uses are not unauthorised and should be excluded as per the provisions of Section 653B c) of the Taxes Consolidation Act 1997, as amended.
- The reasoning in the determination issued by DCC is different from that in the Planner's Report and no explanation for this has been provided.
- The use of these lands for construction related uses is exempt under Class 16 and Class 17 of the Planning and Development Regulations, 2001 as amended.
- The shredding facilitates the sensitive disposal of documents facilitating the clearing out of rooms and readying them for redevelopment works directly associated with the implementation of live planning permissions at the Irish Life Centre.
- The temporary uses on the site are integral to the carrying out of business at the Irish Life Centre.
- The lands are not vacant or idle. The lands are being used for the purposes of implementing planning permissions which relate to and are integral to the ongoing business/trade at the Irish Life Centre. The lands are liable to commercial rates, being a commercial use within the city centre.

7.0 Planning Authority Response

- No further comment.

7.0 **Assessment**

- 7.1. The comments raised in the appeal are noted. The Z5-city centre mixed use land use zoning objective provides for the principle of residential development and there are no known restrictions on the availability of provision of services to this site.
- 7.2. The Planning Authority reported that the uses being conducted within the site do not have the benefit of a planning permission and the lands meet the definition of being vacant and idle as set out within the legislation.
- 7.3. The appellants have made a detailed appeal submission and outlined the nature of the uses within the lands. The appellants set out that there are a number of uses being conducted within the lands on a temporary basis. These uses are set to continue within the subject lands until later 2025 or early 2026. The first use within the subject lands is as a construction compound, which has been agreed with DCC as part of compliance with condition number 6 of planning reference 3622/21, which required the submission of a construction and management plan. The construction compound is used for the storage of construction materials relating to the redevelopment of the Irish Life complex, which received planning permission under planning reference numbers 3622/21 and 5503/22.
- 7.4. Section 653B c) (ii) of the TCA specifically refers to the terms of vacant or idle. This section of the legislation sets out that for lands to be deemed vacant or idle means they: are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to the land. The appellants state that the lands in question are part of the overall Irish Life complex and, therefore, are adjacent to a site where permitted renovation and re-development works are currently being carried out. I verified this fact during a site inspection on the 26th day of September 2024. I am satisfied, therefore; that it is reasonable to consider that the lands are not vacant or idle. Based on the information submitted within the appeal submission and from my site inspection, I would concur with the appellants that the lands are not vacant or idle.
- 7.5. The other use being carried out on the lands is for deliveries to the Irish Life complex, shredding and administration purposes. The shredding of documents is stated to occur externally within a portacabin structure while buildings in the overall Irish life complex which are being renovated and redeveloped as part of the planning

permissions referenced in Section 3 of my report. The appellants set out that these uses are integral to the activities being conducted within the overall Irish life complex.

- 7.6. On balance, the appellants have set out compelling reasoning behind why they think the lands should be deemed out of scope and removed from the RZLT map. The lands are not vacant or idle. The uses being conducted, specifically as a construction compound relate to extant planning permissions which are presently being enacted within the adjacent Irish Life complex. These uses are exempt under the provisions of Classes 16 and 17 of the Planning and Development Regulations, 2001 as amended. The use of the lands as a construction compound was agreed with DCC as part of planning compliance, in relation to submitting a construction and demolition plan for the works. Other uses stated to occur within the subject lands include: The shredding of sensitive correspondence, deliveries to the overall Irish life complex and for administration purposes, all of which are stated to relate to a use on lands that are integral to the operation of a profession being carried out adjacent to the lands.
- 7.7. Therefore, I consider that the appellants have demonstrated that the site is neither vacant nor idle and are being used for purposes relating to the enactment of an extant planning permission and for uses integral to the carrying out of a profession, albeit on a temporary basis. The uses on the lands are stated to be temporary in nature until late 2025 or early 2026. The deliveries/shredding area are activities which are exempt from planning under Classes 16 and 17 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended as they also relate to compliance with planning conditions associated with live planning permissions adjacent to the subject lands. The uses conducted are integral to the operation of a profession on adjoining lands, as provided for under Section 653B c) of the Taxes Consolidation Act, 1997, as amended.
- 7.8. The construction compound is also required as it relates to the implementation of live planning permissions relating to the redevelopment of buildings immediately adjacent to the subject lands and for use which are integral to the operation of a profession on adjoining lands, that is liable to commercial rates, and is reasonable to consider that as provided for under Section 653B c) (i) of the Taxes Consolidation Act, 1997, as amended. The appellants state that DCC agreed with the establishing

of a construction compound within the lands as part of compliance with condition number 5 of planning reference number ref 5503/22, in relation to submitting construction and demolition plan details.

- 7.9. Notwithstanding, the Z5-city centre zoning that pertains to the site which permits residential development, I consider that the site, should be excluded from the Residential Land Tax Maps, as the appellants have demonstrated that the lands are not vacant or idle and are in use relating to the permitted redevelopment of the appellants wider land holding, located immediately adjacent to the subject lands.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the Local Authority and that the site be removed from the final RZLT map as the lands are being used and for uses which are integral to the operation of a profession on adjoining lands, and which are liable for commercial rates as provided for under Section 653B c) of the Taxes Consolidation Act, 1997, as amended.

9.0 Reasons and Considerations

The lands identified as RZ:LT-000235, parcel ID number DCC000064109 on Z5-city centre zoned lands identified within the current Dublin City Development Plan are considered out of scope under the provisions of Section 653B c) (i) of the Taxes Consolidation Act 1997. as amended. The lands are located within a city centre area with services available. Given the site is not vacant or idle, is in use as a builder's compound (relating to compliance with condition number 5 of planning reference 5503/22) and is used for the receipt of deliveries, shredding and storage of sensitive documentation, integral to the operations being conducted within the adjacent Irish Life land holding. The lands are in occupation for uses associated with an authorised use within the adjacent lands, and within the same overall land holding. It is not reasonable to consider that the lands are available for residential development.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Dublin City Council

Local Authority Reference Number: RZ:LT-000235

Appeal Irish Life Assurance PLC 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 21st day of June 2024 in respect of the site described below.

Lands at: 17-20 Marlborough Street and 19-23 Marlborough Place, extending onto Potter's Alley, Dublin 1.

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 set aside the determination and allow the appeal in relation to the lands identified as Parcel ID number DCC000064109 and Local Authority reference number RZLT-000235 and that the lands be removed from the final RZLT map.

Reasons and Considerations

The lands identified as RZ:LT-000235, parcel ID number DCC000064109 on Z5-city centre zoned lands identified within the current Dublin City Development Plan are considered out of scope under the provisions of Section 653B c) (i) of the Taxes Consolidation Act 1997. as amended. The lands are located within a city centre area with services available. Given the site is not vacant or idle, is in use as a builder's compound (relating to compliance with condition number 5 of planning reference 5503/22) and is used for the receipt of deliveries, shredding and storage of sensitive documentation, integral to the operations being conducted within the adjacent Irish Life land holding. The lands are in occupation for uses associated with an

authorised use within the adjacent lands, and within the same overall land holding. It is not reasonable to consider that the lands are available for residential development.

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.

Fergal Ó Bric
Planning Inspectorate

9th day of October 2024