



An
Bord
Pleanála

Inspector's Report ABP-320375-24

Type of Appeal

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

Location

Lands at Jacobs Island, Cork

Local Authority

Cork City Council

Planning Authority Reg. Ref.

CRK-C272-RZLT2-2

Appellant

Hibernia Star

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Lands at Jacobs Island, Cork (Parcel ID CCLA00003022) are located in the southwest suburbs of Cork City. The site is currently under vegetation and surrounds a roughly rectangular construction site that fronts onto the R852. To the north, the site adjoins the N40 Cork South Ring Road, beyond which is the Mahon Point shopping centre. To the south, the site adjoins the R852 and residential development. To the east, is The Sanctuary residential scheme and to the west are open space areas under grass.

2.0 Zoning and Other Provisions

The relevant plan is the Cork City Development Plan 2022-2028.

- The site is zoned ZO 04 Mixed Use Development - To provide and promote a mix of residential and other uses to ensure the creation of a vibrant and sustainable urban area.
- There is no zoning matrix in this Development Plan. Section 12.17 states that *“For the avoidance of doubt, the following zoning objectives facilitate residential uses in principle, either as a primary objective or as uses open for consideration:*
 - *ZO 1 Sustainable Residential Neighbourhoods*
 - *ZO 2 New Residential Neighbourhoods*
 - *ZO 3 Long-term Strategic Regeneration*
 - *ZO 4 Mixed Use Development*
 - *ZO 5 City Centre*
 - *ZO 6 Urban Town Centre*
 - *ZO 7 District Centres*
 - *ZO 8 Neighbourhood and Local Centres*
- Section ZO 4.2 states that permissible uses in ZO 04 includes residential.
- Objective 10.90 Jacobs Island: To provide for mixed use development ranging in height from 4 to 10 storeys on Jacob’s Island to accommodate the mix of uses set

out under the ZO 4 Mixed Use Development Zoning Objective to include a hotel and up to 20,000 square metres of business and technology office use.

- Jacobs Island to City Centre via Balinlough is listed as Core Bus Corridor 11 under Table 4.5 of the Plan.

3.0 Planning History

SHD ABP Ref. 313919-22 relates to the majority of the subject site: On 28 June 2022 an application was made to ABP for 489 no. apartments, creche and associated site works. At this time of writing this report, a decision has not been made on this application.

PA Ref. 2240809, ABP Ref. 314420-22 relates to the northwestern portion of the site: On the 27 November 2023 the Board upheld the LA decision and granted planning permission for the construction of a hotel and office development.

PA Ref. CRK-RZLT-53, ABP Ref. 316895: On the 09 October 2023 the Board decided to confirm the determination of the local authority to retain the subject site on the RZLT map.

Adjoining lands:

SHD ABP Ref. 301991-18 is located to the immediate east of the site and includes the rectangular piece of land that the subject site surrounds: On the 03 October 2018 planning permission was granted for the construction of 413 no. apartments, neighbourhood centre, creche, road improvement works including upgrades to the Mahon Link Road (R852) to the North of the N40 interchange to incorporate a dedicated bus lane and all site development works. This permission was later amended under ABP Ref: 310378.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that part of the subject site is in use as a construction compound for an adjoining development, part of the site has planning permission for non-residential development, the areas of roads to enable the permitted development should be omitted from the RZLT map.

5.0 Determination by the Local Authority

The local authority determined that:

Having evaluated the submission, it is considered that the land does constitute land satisfying the criteria as per Section 653E(1)(a)(ii)(I) of the Taxes Consolidation Act, 1997 as amended, therefore it is recommended that the land(s) at Jacobs Island should be included on the final map for the following reasons:-

- The land is included in the Cork City Development Plan 2022-2028, in accordance with Section 10(2)(a) of the Act of 2000 and is further zone (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- These lands satisfy section 653B(b) of the Act, in that it is reasonable to consider that the land may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient capacity available for such development.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The area of the site that was permitted for non-residential development under PA Ref. 2240809, ABP Ref. 314420-22 should be considered separately from the area of the site under the current SHD application SHD ABP Ref. 313919-22.
- The lands the subject of SHD ABP Ref. 313919-22 do not have access to public infrastructure with sufficient capacity to serve the site, on the basis that the LA opinion in respect of this application states that traffic from the proposed development cannot be accommodated within the existing road infrastructure. Condition 2 of the LA recommendation on this file states that upgrade works are to be undertaken at the M40 Mahon Junction, in agreement with the LA and TII.
- Part of the subject site is in use as a construction compound for adjoining development. This part of the site is not vacant or idle.

- The area of the permitted non-residential development (PA Ref. 2240809, ABP Ref. 314420-22) should be omitted from the RZLT map.
- The roads infrastructure and public opens spaces serving the development permitted under PA Ref. 2240809, ABP Ref. 314420-22 should be omitted from the RZLT map.

7.0 Assessment

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the Act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that:

"in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only".

The appeal submission has raised grounds that are outside of the scope of the Boards assessment including the omission of lands the subject of non-residential planning permission and the division of the site into discrete parcels for exclusion from the RZLT map. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing extant or undecided planning permissions.

The site was the subject of a previous appeal under PA Ref. CRK-RZLT-53, ABP Ref. 316895. Under this previous appeal, the Board confirmed the determination of the LA to retain the site on the RZLT map. The inspectors report under ABP Ref. 316895 found that there was sufficient capacity in the road network to serve residential development at the site. The character and context of the site has not significantly

changed since this previous determination.

The site is zoned ZO 04, Mixed Use Development. There is no zoning matrix in the Development Plan, however, Section ZO 4.2 states that residential is a permissible use in ZO 04 zoned lands. In this regard, I consider that the site meets the criteria under Section 653B(a) of the Act.

The appellant states that part of the site is not vacant or idle on the basis that it is in use as a construction compound for adjoining development. The lands are zoned mixed use and are, therefore, subject to the provisions of Section 653B(ii) of the Act. Section 653BA(1) of the Act provides a definition for vacant and idle as follows: *“‘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”*;. I consider that construction works constitute a trade or profession under this definition. The submitted documentation provides no evidence that the construction compound at the site has the benefit of planning permission. In addition, I note that Page 12 of the RZLT guidelines states the following: *“Temporary uses of land should not result in land being excluded from the tax measure”*. Drawing from the foregoing, I consider that the part of the site currently in use as a construction compound does not meet the criteria for exclusion under Section 653B(ii) of the Act.

The appellant states that there is insufficient capacity on the road network to serve residential development at the southern portion of the site, with reference to correspondence from the LA in respect of SHD application SHD ABP Ref. 313919-22. It is stated that significant works are required to provide sufficient capacity in the network to serve development. The subject site immediately adjoins the R852 and there is an existing arm from the roundabout on the R852 that is available to connect to the subject site. In this way, it is reasonable to consider that the site can connect to the road network. The Board’s decision under ABP Ref. 314420-22, which relates to a hotel development on the northern portion of the site, post-dates the LA correspondence submitted by the appellant in respect of SHD ABP Ref. 313919-22. Under ABP Ref. 314420-22, the Board considered the traffic and transport impacts of this development satisfactory. Having regard to the planning history of the site and available information, it is reasonable to consider that there is sufficient capacity in the

network to serve the site. In respect of potential works required to provide additional capacity in the road network, I note that the N40 Mahon Road is a publicly owned road. In this regard, no Third-Party lands or consents would be required to undertake upgrade works to this part of the road network.

Given the urban location of the site and the character of development in the immediate vicinity, it is reasonable to consider that the site is able to connect to an existing public water network. For reference, the Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 24 September 2024) indicates that there is spare capacity available at the Carrigrennan WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 24 September 2024) indicates that there is capacity available at the Cork City Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Drawing from the foregoing, I consider that the site accords with the criteria under Section 653B(b) of the Act.

With reference to the provisions under Section 653(c) of the Act, there are no physical conditions or constraints at the site that would preclude the provision of dwellings at the site. In this regard, the site meets the criteria for inclusion in the RZLT map.

The appellant states that the area of the non-residential development, roads and public open spaces permitted under PA Ref. 2240809, ABP Ref. 314420-22 should be excluded from the RZLT map. I note that planning permission is not listed as a criterion for exclusion from the RZLT map under Section 653B(i), (ii), (iii), (iv), or (v). Page 23 of the RZLT guidelines states that all lands with the benefit of planning permission should remain in-scope for inclusion on the RZLT map. In this way, the area of the permitted non-residential development and ancillary infrastructure does not meet the criteria for exclusion from the RZLT map under these parts.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Lands at Jacobs Island, Cork (Parcel ID CCLA00003022) 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. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT 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 Authority 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 Lands at Jacobs Island, Cork (Parcel ID CCLA00003022) are located on lands zoned ZO 04, Mixed Use Development where residential is permissible and, therefore, is considered in scope of section 653B(a). The subject site immediately adjoins the R852 and it is reasonable to consider that the site is able to connect to this network. Recent planning permissions at the site indicate that there is capacity in the network to serve development. I note that the N40 Mahon Road is under public control, therefore, any works required to provide additional capacity at this part of the network would not be significant as no Third-Party lands or consents would be required. Given the proximity of the public road and the nature of development in the area, it is reasonable to consider that the site can connect to the water network. The UE capacity registers, accessed 24 September 2024, indicate that there is capacity in these networks to serve the site. No physical constraints have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands. Extant planning permissions are not one of the criteria of exclusion from the RZLT map under Section 653B(i), (ii), (iii), (iv), or (v). Based on the foregoing, the site meets the criteria for inclusion on the RZLT map under Section 653B of the Act.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Cork City Council

Local Authority Reference Number: CRK-C272-RZLT2-2

Appeal by Hibernia Star care of Thomas McCarthy 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 Cork City Council on the 27 day of June 2024 in respect of the site described below.

Lands at: Lands at Jacobs Island, Cork

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 Lands at Jacobs Island, Cork (Parcel ID CCLA00003022) on the final map.

Reasons and Considerations

The lands identified as Lands at Jacobs Island, Cork (Parcel ID CCLA00003022) are located on lands zoned ZO 04, Mixed Use Development where residential is permissible and, therefore, is considered in scope of section 653B(a). The subject site immediately adjoins the R852 and it is reasonable to consider that the site is able to connect to this network. Recent planning permissions at the site indicate that there is capacity in the network to serve development. I note that the N40 Mahon Road is under public control, therefore, any works required to provide additional capacity at this part of the network would not be significant as no Third-Party lands or consents would be required. Given the proximity of the public road and the nature of development in the area, it is reasonable to consider that the site can connect to the water network. The UE capacity registers, accessed 24 September 2024, indicate that there is capacity in these networks to serve the site. No physical constraints have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands. Extant planning permissions are not one of the criteria of exclusion from the RZLT map under Section 653B(i), (ii), (iii), (iv), or (v). Based on the foregoing, the site meets the criteria for inclusion on the RZLT map under Section 653B of the Act.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Sinéad O'Connor

Planning Inspector

Date: 01 October 2024.