



An
Bord
Pleanála

Inspector's Report ABP-320380-24

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

The Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin

Local Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

DM24/0019

Appellants

The Trustees of Carmelite Monastery of St. Joseph

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as the Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin (Parcel ID DELA00001525) are located on the east side of Kilmacud Road Upper (R826) in the suburban area between Kilmacud and Stillorgan. The lands currently accommodate a monastery building with ancillary church, a gate lodge and outhouses. The eastern portion of the site is under grass. To the north, the site adjoins an apartment complex and the Woodthorpe residential development and to the south is are residential dwellings and St. Raphaela's Secondary School. To the east, is the Wesbury residential development and to the west is Kilmacud Road Upper.

2.0 Zoning and Other Provisions

The relevant plan is the Dun Laoghaire Rathdown County Development Plan 2022-2028.

- The lands are zoned objective A - To provide residential development and improve residential amenity while protecting the existing residential amenities.
- Table 13.1.2 states that residential is permitted in principle on lands zoned objective 'A'.
- Protected Structure No. 1401, which is described as a Monastery Building, is located within the subject site.
- Policy Objective HER8: 'Work to Protected Structures' states the following:

It is a Policy Objective to:

- i. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- ii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the 'Architectural Heritage Protection Guidelines for Planning Authorities' published by the Department of the Arts, Heritage and the Gaeltacht.
- iii. Ensure that all works are carried out under supervision of a qualified professional with specialised conservation expertise.

- iv. Ensure that any development, modification, alteration, or extension affecting a Protected Structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout, and materials.
 - v. Ensure that the form and structural integrity of the Protected Structure is retained in any redevelopment and that the relationship between the Protected Structure and any complex of adjoining buildings, designed landscape features, or views and vistas from within the grounds of the structure are respected.
 - vi. Respect the special interest of the interior, including its plan form, hierarchy of spaces, architectural detail, fixtures and fittings and materials.
 - vii. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.
 - viii. Protect the curtilage of protected structures and to refuse planning permission for inappropriate development within the curtilage and attendant grounds that would adversely impact on the special character of the Protected Structure.
 - ix. Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.
 - x. Ensure historic landscapes and gardens associated with Protected Structures are protected from inappropriate development (consistent with NPO 17 of the NPF and RPO 9.30 of the RSES).
- Section 11.4.1 notes the importance of the curtilage surrounding Protected Structures and states that “*The traditional proportionate relationship in scale between buildings, returns, gardens and mews structures should be retained. A garden size appropriate to that of the structure should be also be retained*”.
 - Section 12.11.2 states that “*The inclusion of a structure in the Record of Protected Structures does not prevent a change of use of the structure, and/or development of, and/or extension to, provided that the impact of any proposed development does not negatively affect the character of the Protected Structure and its setting (Refer also to Section 11.4.1)*”.
 - Section 12.11.2.3 states that where development is proposed on the grounds of a Protected Structure “*The overall guiding principle will be an insistence on high quality*

in both materials, and design, which both respects and complement the Protected Structure, and its setting”.

- There are several areas across the site that are subject to the mapped objective *“To protect and preserve Trees And Woodlands”.*
- Section 12.8.11 ‘Existing Trees and Hedgerows’ states the following: *“New developments shall be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerows. New developments shall, also have regard to objectives to protect and preserve trees and woodlands (as identified on the County Development Plan Maps). The tree symbols on the maps may represent an individual tree or a cluster of trees and are not an absolute commitment to preservation. Decisions on preservation are made subject to full Arboricultural Assessment and having regard to other objectives of the Plan”.*

3.0 Planning History

PA. Ref. VS0078, ABP Ref. VV06D.303529: On the 22 October 2019, the Board decided to cancel the local authority decision to enter the site onto the Vacant Sites Register.

PA Ref. DM22-0047, ABP Ref. 316455-23: On the 18 October 2023, the Board decided to confirm the determination of the local authority to retain the subject site on the RZLT Map.

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 the site is occupied by a residential home that is exempt from payment of Local Property Tax on the basis that it is owned and operated by a charity, that a family is residing in the gate lodge and that there are 10 no. sisters residing in the monastery; and that a trade comprising the distribution of altar breads is carried out from the site; and the lands are in constant use by visitors and by the sisters themselves and the site supports a range of wildlife.

5.0 Determination by the Local Authority

The local authority determined that:

By Order dated 25 June 2024 it was decided to include the above land on the final map of the Residential Zoned Land Tax for the following reason(s).

1. The land is zoned solely or primarily for residential use.
2. It is reasonable to consider the land may have access, or be connected, to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development.
3. It is reasonable to consider the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The physical condition of the site precludes the provision of dwellings as the site accommodates living accommodation, a chapel and a cemetery, which are consecrated grounds.
- The Protected Structure and objectives to protect and preserve trees and woodlands at the site precludes the provision of dwellings.
- The commercial use of the site has been operational since before the commencement of the Local Government (Planning and Development) Act 1963, and is, therefore, not unauthorised.
- The trade operating from the site is liable to commercial rates however, the appellant is exempt from the payment of rates as they are a charitable organisation.
- Altar bread is sold to churches, hospitals, convents, nursing homes and other religious orders in the adjacent residential areas. These institutions serve a large population in the area.
- The sisters residing at the site provide social and community services.

- Daily masses on the property are attended by members of the public.
- The Act does not require that lands are subject to a Development Plan objective for social and community uses for those lands to meet the criteria under Section 653B(iii)(l).

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 issues surrounding the constitutionality of the RZLT and the financial implications of payment. 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 the constitutionality of the RZLT or the financial implications of payment.

The site was the subject of a previous appeal under PA Ref. DM22-0047, ABP Ref. 316455-23. Under this previous appeal, the Board confirmed the determination of the LA to retain the site on the RZLT map. The grounds of appeal under this previous case are largely similar to those of the current appeal. The Inspector's Report under ABP Ref. 316455-23 found that the site did not meet the criteria for exclusion under Section 653B(i) of the Act and met the criteria for inclusion on the RZLT map. I do not consider that the character or context of the site has significantly changed since this previous

decision was made.

The lands are zoned objective A – ‘To provide residential development and improve residential amenity while protecting the existing residential amenities’ and, therefore, meet the criteria under Section 653B(a) of the Act. The appellant states that the lands are in residential use. As per page 8 of the RZLT guidelines, residential properties are considered in-scope for inclusion on the RZLT map but are not liable for the payment of RZLT. It is further stated that residential properties with a curtilage greater than 0.4047 ha are also not liable for the tax, but landowners must engage with the Revenue Commissioners. These matters fall outside the scope of the Boards assessment, which is limited to the criteria under Section 653B of the Act.

The subject site immediately adjoins the R826 at its western boundary and there is an existing vehicular entrance to the site from this road. On this basis, it is reasonable to consider that the site can connect to the road and that there is sufficient capacity in the road network to serve the site. The site is located in a suburban location and immediately adjoins existing residential development on three sides; therefore, it is reasonable to consider that the site can connect to the existing potable and wastewater networks. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 26 September 2024) indicates that there is spare capacity available at the Ringsend and Shanganagh WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 26 September 2024) indicates that there is capacity available at the Greater Dublin Area 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 meets the criteria under Section 653B(b) of the Act.

The appellant states that the Protected Structure, mapped objectives, and consecrated grounds at the site preclude the provision of dwellings on the lands. There are no policies or objectives of the Plan that preclude the provision of development on the grounds of, or proximate to, a Protected Structure. Section 12.11.2.3 of the Development Plan specifically describes development standards for development within the grounds of Protected Structures. Further to the above, I note that development has already occurred around the Protected Structure such that the

curtilage of the structure is already largely developed. Regarding the mapped objectives to protect vegetation at the site, it is stated in Section 12.8.11 that new developments should incorporate, as far as is practicable, existing vegetation, subject to the recommendations of an arborist. In this way, Section 12.8.11 of the Plan does not preclude the provision of dwellings or new development on lands the subject of mapped objectives to protect trees and woodlands. The appeal statement makes reference to a cemetery on the subject site, which constitutes consecrated grounds. No information is provided in respect of the location of the cemetery and this use is not visible on the mapping provided. In the absence of substantive information regarding this use, it is reasonable to consider that it does not preclude the provision of dwellings at the site. From the documentation submitted, there are no physical conditions or constraints at the site that would preclude the provision of dwellings. Based on the foregoing, I consider that the site meets the criteria under Section 653B(c) of the Act.

The appellant states that the site is in use for a trade that is liable to commercial rates. The site is the subject of a primarily residential land use zoning and is, therefore, subject to the provisions of Section 653B(i). To meet the criteria for exclusion under this part of the Act, the premises is required to be used by a trade or profession that is liable to commercial rates, that is not unauthorised, and that provides services to residents in adjoining residential areas. From the information submitted in the Appeal Statement, I consider that a trade is being undertaken at the site, comprising the distribution of altar bread. I accept the reasoning in the appeal statement that this trade is liable to commercial rates, notwithstanding that the appellant is exempt from payment due to their status as a charity. On the basis that the appellant's trade has been operational since circa 1888, I accept that the distribution of altar bread from the site pre-dates the commencement of the Local Government (Planning and Development) Act 1963. From the appeal submission, I note that altar bread from the site is indirectly distributed to residents in the adjoining residential areas through churches and hospitals. On the basis that residents are not able to directly purchase from the subject site and are reliant on a third-party to access the service provided, I do not consider that the existing use provides services to residents in adjoining residential areas. In this regard, I do not consider that the site meets the criteria for exclusion under Section 653B(i).

The Appeal Statement outlines that the Carmelite Sisters offer services to vulnerable members of the community and that the full extent of the lands are open to the public. It is further stated that the chapel holds daily mass, which is attended by members of the public. On the basis that the chapel and grounds of the monastery are open to, and utilised by the general public, I consider that the lands provide a social and community service to residents in the locality. As per the appeal statement, the Carmelite Sisters provide services to the wider community through prayer and counsel, which I consider constitutes a community service under the Act. Drawing from the foregoing, I consider that the lands meet the criteria for exclusion for the RZLT map under Section 653B(iii)(l).

I note that this conclusion differs from that under ABP Ref. 316455-23 however, based on the documentation submitted, I consider that the services and lands form part of the community infrastructure and facilities available to the local population.

The appellant states that the lands are the subject of a statutory designation and, therefore, meet the criteria for exclusion under Section 653B(iv) of the Act. The chapel within the monastery grounds is included on the Record of Protected Structures. As is discussed elsewhere in this report, the designation of the chapel as a Protected Structure does not preclude the provision of dwellings at the site. I note that the areas immediately surrounding the chapel have already been developed as part of the monastery. With reference to the provisions of the Development Plan in respect of development in the grounds of Protected Structures, I do not consider that that lands meet the criteria for exclusion under Section 653B(iv) of the Act.

8.0 Recommendation

Having regard to the foregoing I consider that the lands identified as Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin (Parcel ID DELA00001525) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended for the following reasons.

- The lands meet the criteria for exclusion under Section 653B(iv) as the chapel offers daily services that are attended by the public, the Carmelite Sisters offer social and community services through prayer and counsel, and the lands are open to the public for their enjoyment.

I recommend that the determination of the local authority be set aside, and the lands excluded from 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 the Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin (Parcel ID DELA00001525) are located on lands zoned objective A – ‘To provide residential development and improve residential amenity while protecting the existing residential amenities’ and are, therefore, considered in scope of section 653B(a). The lands immediately adjoin the public road and established residential developments; therefore, it is reasonable to consider that the lands can connect to existing public infrastructure and services. The UE capacity registers published June 2023 (accessed 26 September 2024) indicate that there is capacity in the water and foul water networks to serve the site. The lands are subject to designations in respect of the Protected Structure and existing trees at the site. With reference to Development Plan policies and objectives, it is reasonable to consider that these designations do not preclude the provision of dwellings at the site. On the basis that the chapel offers daily services for the community, the Carmelite Sisters provide social services, and that the lands are open to the public, it is reasonable to consider that the site meets the criteria for exclusion for the RZLT under Section 653B(iv) of the Act. No physical or other reasons 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.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dun Laoghaire Rathdown County Council

Local Authority Reference Number: DM24/0019

Appeal by The Trustees of Carmelite Monastery of St. Joseph care of Mason Hayes & Curran 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 Dun Laoghaire Rathdown County Council on the 25 day of June 2024 in respect of the site described below.

Lands at: The Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin

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 of the local authority and allow the appeal in relation to the lands identified as the Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin (Parcel ID DELA00001525).

Reasons and Considerations

The lands identified as the Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Blackrock, Co. Dublin (Parcel ID DELA00001525) are located on lands zoned objective A – ‘To provide residential development and improve residential amenity while protecting the existing residential amenities’ and are, therefore, considered in scope of section 653B(a). The lands immediately adjoin the public road and established residential developments; therefore, it is reasonable to consider that the lands can connect to existing public infrastructure and services. The UE capacity registers published June 2023 (accessed 26 September 2024) indicate that there is capacity in the water and foul water networks to serve the site. The lands are subject to designations in respect of the Protected Structure and existing trees at the site. With reference to Development Plan policies and objectives, it is reasonable to consider that these designations do not preclude the provision of dwellings at the site. On the basis that the chapel offers daily services for the community, the Carmelite Sisters provide social services, and that the lands are open to the public, it is reasonable to consider that the site meets the criteria for exclusion for the RZLT under Section 653B(iv) of the Act. No physical or other reasons 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.

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: 03 October 2024.