



An
Bord
Pleanála

Inspector's Report ABP-320382-24

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

68 Old Kilmainham, Dublin 8

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000195

Appellant(s)

DPL Group Ltd.

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. These brownfield lands on the south side of Old Kilmainham Road and which adjoin Brookfield Road encompass Nos. 68, 69, 70, 70A, 71 and 71A Old Kilmainham within their boundary. Nos. 68, 68, 71 and 71A comprise a number of single, two and three storey buildings and yard areas which are in operation as a builder's providers, retail outlet and DIY store. Nos. 70 and 7A comprise two dwellings with frontage onto the Old Kilmainham Road. The lands comprise part of Land Parcel ID DCC000062963.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z1 – 'Sustainable Residential Neighbourhoods' in the Dublin City Development Plan 2022-2028. This zoning objective seeks 'To protect, provide and improve residential amenities.'
- 2.2. The lands are located within the zone of archaeological potential for Recorded Monument and Place (RMP) DU018-020 (historic city).

3.0 Planning History

Planning Authority Ref. 2835/06 refers to a June 2006 decision to grant permission for extension of Dublin Providers Ltd. building at 68 Old Kilmainham by the construction of a four storey light weight building to the top of the main building for storage.

Planning Authority Ref. 0836/98 refers to a May 1998 decision to grant permission for single storey extension to existing office accommodation.

Planning Authority Ref. 1178/98 refers to an August 1998 decision to grant permission for the erection of a bathroom showroom, comprising one additional storey on the existing single storey bathroom showroom.

Planning Authority Ref. 1281/99 / An Bord Pleanála Ref. PL29S.112204 refers to a November 1999 decision to grant permission for 4 no. two storey townhouses to the rear of existing builders providers store with entrance from Almeida Avenue.

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 in use as a builders providers, retail outlet and DIY store serving the public since 1971. It is indicated that commercial rates are being paid.

5.0 Determination by the Local Authority

- 5.1 The Local Authority made a split decision as follows:

Part 1

The land comprising Nos. 68, 71 and 71A Old Kilmainham do not satisfy Section 653(B)(c)(i) of the Taxes Consolidation Act 1997, as amended, as these are in use as a builder's providers, retail outlet and DIY store, the property is liable for rates and the commercial use would provide services to adjacent residential areas.

Part 2

The land comprising Nos. 69, 70 and 70A Old Kilmainham including lands are warehouse to the rear of Nos. 69 and 70A Old Kilmainham extending south to the southern boundary of the property with No.646B South Circular Road 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.
- Nos. 70 and 70A Old Kilmainham are in residential use and No. 69 Old Kilmainham including lands and warehouse to the rear of Nos. 69 and 70A Old Kilmainham extending south to the southern boundary of the property with No. 646B South Circular Road are in unauthorised use.
- Satisfy the other qualifying criteria of section 653B of the Taxes Consolidation Act.

6.0 The Appeal

6.1 Grounds of Appeal

The following points are made in support of the appeal:

- The appeal relates to the inclusion of No. 69 Old Kilmainham on the final RZLT map.
- This property is rateable and should not be included on the map; it is an integral part of the existing business.

The following documents are appended to the appeal:

- A copy of the Local Authority Determination
- A Rates Bill dated 16th January 2024 for 69 Old Kilmainham Road (Property Reference 5160572000).

7.0 **Assessment**

7.1 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."

7.2 Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion 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 subject lands are zoned Zone Z1 – 'Sustainable Residential Neighbourhoods' in

the Dublin City Development Plan 2022-2028 and are considered within the scope of section 653B(a)(i).

- 7.3 Having regard to section 653B(b), these brownfield lands are within the city centre and it is apparent that they have access to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity for such development.
- 7.4 In relation to section 653B(c), given the developed nature of these lands and their planning history, I consider it reasonable to consider they are not affected, in terms of their physical condition, by matters to a sufficient extent which would preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains.
- 7.5 The appellant contends that the land at No. 69 Old Kilmainham Road should not be included in the RZLT map as it is rateable and is an integral part of the existing building merchant's operation being used as a workshop / warehouse. There is correspondence on file from the Rates Office of the Local Authority which confirms that commercial rates are paid on a number of properties on the lands including No. 69 Old Kilmainham Road.

Section 653B(c)(i) provides an exemption from the RZLT for lands zoned solely or primarily for residential use, provided that development on the land is not unauthorised development, that it is in use as a premises, in which a trade or profession is being carried on, that it is liable to commercial rates and that it is reasonable to consider is being used to provide services to residents of adjacent residential areas.

The Local Authority has reported, however, that the land comprising No. 69 Old Kilmainham, including the land and warehouse to the rear of Nos. 69 and 70A Old Kilmainham extending south to the southern boundary with 646B South Circular Road, is considered to be in unauthorised use as a builder's providers, and therefore constitutes land satisfying the relevant criteria for inclusion on the map. I note that the appellant has not provided any documentary evidence which demonstrates that this land comprising No. 69 Old Kilmainham, including the land and warehouse to the rear of Nos. 69 and 70A Old Kilmainham has the benefit of planning permission for use as a builder's providers. Compliance with all the criteria of section 653B(c)(i)

is required for the lands to be excluded from the map. Having regard to the foregoing, I conclude that this land meets the qualifying criteria as set out in section 653B of the Taxes Consolidation Act 1997, as amended, for inclusion on the final RZLT map.

8.0 Recommendation

I consider that the land comprising No. 69 Old Kilmainham, including the land and warehouse to the rear of numbers 69 and 70A Old Kilmainham extending south to the southern boundary with 646B South Circular Road within Parcel ID DCC000062963 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and, therefore, I recommend that the Local Authority determination be confirmed and the lands retained on the map.

9.0 Reasons and Considerations

The land comprising number 69 Old Kilmainham, including the land and warehouse to the rear of numbers 69 and 70A Old Kilmainham extending south to the southern boundary with number 646B South Circular Road, located within Parcel ID DCC000062963 on the RZLT Final Map zoned Z1 'Sustainable Residential Neighbourhoods' are considered to be within scope of Section 653B(a). The lands are located within Dublin city and have access to or can be connected to public infrastructure and facilities including water supply infrastructure. 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 Z1 zoning objective that applies to the lands. Number 69 Old Kilmainham, including lands and warehouse to the rear of numbers 69 and 70A Old Kilmainham are in unauthorised use as builder's providers, and therefore, do not avail of the exemption under section 653B(c)(i) of the Taxes Consolidation Act 1997, as amended.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000195

Appeal by DPL Group Limited 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 17th day of June 2024 in respect of the site described below.

Lands at: 68 Old Kilmainham, 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 confirm the determination of the local authority and direct the local authority to retain the lands comprising number 69 Old Kilmainham, including the land and warehouse to the rear of numbers 69 and 70A Old Kilmainham within Parcel ID DCC000062966 on the final map.

Reasons and Considerations

The lands comprising number 69 Old Kilmainham, including the land and warehouse to the rear of numbers 69 and 70A Old Kilmainham extending south to the southern boundary with number 646B South Circular Road located within Parcel ID DCC000062963 on the RZLT Final Map zoned Z1 'Sustainable Residential Neighbourhoods' are considered to be within scope of Section 653B(a). The lands are located within Dublin city and have access to or can be connected to public infrastructure and facilities including water supply infrastructure. 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 Z1 zoning objective that applies to the lands. Number 69 Old Kilmainham, including lands and warehouse to the rear of numbers 69 and 70A Old Kilmainham are in unauthorised use as builder's providers, and therefore, do not avail of the exemption under section 653B(c)(i) of the Taxes Consolidation Act 1997, as amended.

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

8th October 2024