



An  
Bord  
Pleanála

## Inspector's Report ABP-320391-24

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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 Map

**Location**

Lands at 14/15 Monkstown Crescent, Blackrock, Co. Dublin A94VA49

**Planning Authority**

Dun Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

DM24/0020

**Appellant(s)**

Better Value Unlimited Company

**Inspector**

John Duffy

## **1.0 Site Location and Description**

- 1.1. The subject lands are situated on the corner of Monkstown Crescent and Longford Terrace in Blackrock, Co. Dublin. The lands accommodate an end of terrace commercial unit in the Monkstown Neighbourhood Centre, which is presently being renovated and extended. The subject lands are identified as Land Parcel ID DELA00002312 on the RZLT map.

## **2.0 Zoning and Other Provisions**

- 2.1. The subject lands are zoned 'NC - Neighbourhood Centre' in the Dun Laoghaire Rathdown County Development Plan 2022-2028. This zoning objective seeks 'To protect, provide for and-or improve mixed-use neighbourhood centre facilities.' Residential use is permitted in principle within the 'NC' zoning objective.
- 2.2. The lands are located within the Monkstown Architectural Conservation Area (ACA).
- 2.3. There is another RZLT appeal by the same appellant in respect of lands at 26-29 George's Street, Dun Laoghaire, Co. Dublin (An Bord Pleanála Ref. ABP-320409-24 refers).

## **3.0 Planning History**

### RZLT

Under Ref. DM22-0083 the Local Authority determined the subject land was in scope and should remain on the RZLT map.

### Other

An Bord Pleanála Ref. ABP-312286-21 (Planning Authority Ref. D21A/0869) refers to July 2023 decision grant development consisting of an extension and refurbishment of the existing two-storey building and all other associated site layout alterations and site service works.

Planning Authority Ref. D94A/0347 refers to a July 1994 decision for renovations to existing car showroom, new sign and change of use from offices to apartment at first floor.

## 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 RZLT map on the following basis:

- The lands do not satisfy the relevant criteria for inclusion on the map.
- It is a policy objective of the Council (RET7) to support the development of Neighbourhood Centres as the focal point of communities and neighbourhoods.
- It is a policy objective of the Council (RET11) to control the provision of non-retail uses at ground floor level within Neighbourhood Centres.
- Permission was granted in 2023 for extension and refurbishment of the existing building on the site to provide floor space of approximately 400 sqm at ground floor level (including ancillary off-licence and café) with storage and ancillary facilities at first floor level. Construction works are scheduled to commence this year.
- The subject site has not been allocated for residential use in the Dun Laoghaire Rathdown County Development Plan. The corer function of Neighbourhood Centres is to provide a range of convenient and easily accessible shops and services within walking distance of the local population.
- The site is not available for a future residential development, so its inclusion does not achieve the tax's primary objective of encouraging the timely activation of zoned and serviced land for housing.

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

5.1. The Local Authority determined that the lands are in scope for the following reasons:

- The land is zoned for a mixture of uses, including residential uses and it is reasonable to consider that the land is vacant or idle.
- 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.
- It is reasonable to consider that 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 following points are made in support of the appeal:

- Permission has been granted under An Bord Pleanála Ref. ABP-312286-21 (Planning Authority Ref. D21A/0869 refers) for a non-residential development on the lands. A commencement notice has been submitted and significant works are underway to implement the permission.
- In Q4 2024 / Q1 2025 this non-residential development ( a shop) is scheduled to open for business. Therefore, due to the on-going construction works the site cannot be considered to be vacant or idle.
- Section 27 of the document titled 'Residential Zoned Land Tax – Your Questions Answered' published by the Department of Housing, Local Government and Heritage (DHLGH) indicates that if land, which is suitable for both residential and other development, and permission is granted for development other than residential, the land will come outside the scope of the tax upon the commencement of the construction of non-residential development.

The appeal includes the following attachments:

- Appendix 1: Site Location Plan.
- Appendix 2: Timeline for implementation of the RZLT.
- Appendix 3: Criteria for including and excluding lands from Local Authority RZLT maps.
- Appendix 4: Local Authority assessment and decision.

## 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, as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map 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 'NC - Neighbourhood Centre' within which residential use is permissible and are therefore within scope of section 653B(a)(ii).

7.3 Having regard to section 653B(b), these brownfield lands are within the urban area 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 Having regard to the brownfield nature of the lands and its planning history, I consider the lands are not affected by issues to a sufficient extent which would preclude the provision of houses, including contamination or the presence of known archaeological or historic remains.
- 7.5 Section 653B(c)(ii) provides for exclusion of lands zoned for a mixture of uses including residential use from the RZLT map unless it is reasonable to consider that the land is vacant or idle. Page 12 of the RZLT Guidelines set out that 'vacant or idle land' means land which, having regard only to 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.

Section 3.1.2 of the RZLT Guidelines relates to exclusions of particular lands from the map. In terms of determining whether lands are vacant or idle the Guidelines state the following:

*Setting out the text in the legislation '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; the first step is to determine if the development on the land is required for or integral to a trade or profession being carried out on the land or adjacent to the land. The second step is to determine if the development is unauthorised.*

*If the development on the land complies with the first step and is not unauthorised, then it is not in scope and should not be included within the maps. Conversely, if development on the land complies with the first step but is unauthorised development, then it is in scope and should be included on the maps. Section 2 of the Planning and Development Act 2000 regarding 'unauthorised development' must clearly inform assessment in this regard. Aside from uses commenced before 1 October 1964, or exempted development (within the meaning of section 4 of the Act of 2000) the development of the land must be authorised.*

The appellant contends that the lands are not vacant or idle and do not satisfy section 653B (c)(ii) on the basis that significant construction works are on-going to implement a grant of permission for a shop on the lands with an anticipated

completion date of Q4 2024 or Q1/2025. Section 4.1.1 vi) 'Exclusions' of the Guidelines state, as identified in Section 3.1.2, there are a number of reasons why zoned and serviced land could be excluded from the map. This includes land in need of specific remediation for contamination, land which has significant known archaeological remains, land on the derelict site register, land required for infrastructure identified in section 653B(c)(iii)(I) – (VII), and exclusions for existing uses on land. These are not applicable in this instance. The fact that the lands are under construction does not qualify for omitting the lands from the RZLT map under section 653B. As such, I consider the lands to be vacant or idle in accordance with section 653B (c)(ii).

- 7.6 I note the ground of appeal refers to the DHLGH document 'Residential Zoned Land Tax – Your Questions Answered' which indicates that appropriately zoned land with the benefit of planning permission will fall outside the scope of the tax upon commencement of construction of non-residential development. In this appeal process, the board is restricted to considering whether the lands meet the qualifying criteria as set out in section 653B of the Taxes Consolidation Act 1997, as amended. This matter is not included under section 653B and, therefore, cannot be considered by the board. This may be an issue that can be taken up with the Revenue Commissioners at a later stage of the RZLT process.
- 7.7 Section 3.2.3 'Consideration of Submissions on Inclusion on Maps' of the Guidelines states that "matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions." Accordingly, the matters raised in the appeal submission relating to planning permission and commencement on lands do not fall within the criteria for exclusion as set out under section 653B of the Taxes Consolidation Act 1997, as amended, and as such, they are not for the consideration of the board.
- 7.8 Having regard to the foregoing I consider that Parcel ID DELA00002312 should remain for inclusion on the final RZLT Map given the lands are zoned for a mixture of uses including residential development, that they are vacant or idle and that they do not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

## 8.0 Recommendation

- 8.1. I consider that the lands identified as Parcel ID DELA00002312 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 the Local Authority determination should be confirmed and the lands retained on the map.

## 9.0 Reasons and Considerations

The lands identified as Parcel ID DELA00002312 on the RZLT Final Map zoned 'NC - Neighbourhood Centre' are considered to be within scope of Section 653B(a). The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). Matters relating to planning and commencement on lands in-scope do not fall within the criteria for exclusion as set out under section 653B and, as such, they are not for the consideration of the board. The lands, located in an urban area have access to public infrastructure and facilities necessary for dwellings to be developed. 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 'NC - Neighbourhood Centre' 'zoning objective that applies to these lands. The subject lands are considered to be in scope, given that they accord with the criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## 10.0 Recommended Draft Board Order

**Taxes Consolidation Act 1997 as amended**

**Planning Authority: Dun Laoghaire Rathdown County Council**

**Local Authority Reference Number: DM24/0020**

**Appeal** by Better Value Unlimited Company 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<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** 14/15 Monkstown Crescent, 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 confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID DELA00002312 on the final map.

## **Reasons and Considerations**

The lands identified as Parcel ID DELA00002312 on the RZLT Final Map zoned 'NC - Neighbourhood Centre' are considered to be within scope of Section 653B(a). The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). Matters relating to planning and commencement on lands in-scope do not fall within the criteria for exclusion as set out under section 653B and as such, they are not for the consideration of the board. The lands, located in an urban area have access to public infrastructure and facilities necessary for dwellings to be developed. 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 'NC - Neighbourhood Centre' 'zoning objective that applies to these lands. The subject lands are considered to be in scope, given that they accord with the criteria set out in section 653B 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.

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John Duffy  
Planning Inspector

30<sup>th</sup> September 2024