



An
Bord
Pleanála

Inspector's Report ABP-320402-24

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

Lands at Townsend Street, Shaw Street and Spring Garden Lane, Dublin 2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000214

Appellant(s)

Esprit Investments Limited

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject lands, triangular in configuration, are located on the eastern side of Spring Garden Lane, which itself is accessed from Townsend Street to the north and Pearse Street to the south. The lands are separated from an adjoining parcel to the north-east, which is in the same ownership, by the elevated railway line which is supported on an arched stone overbridge. There is hoarding around the subject lands which is identified as Land Parcel ID DCC000064312 on the RZLT map.
- 1.2. There is a concurrent RZLT appeal (An Bord Pleanála Reference ABP-320345-24) on adjoining lands to the north east.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z5 – ‘City Centre’ in the Dublin City Development Plan 2022-2028. This zoning objective seeks to ‘consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’ The lands are therefore zoned for a mixture of uses including residential use.
- 2.2. The lands are located within the Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City). The lands are also located within the Zone of Archaeological Interest.

3.0 Planning History

Planning Authority Ref. 4778/19 – Permission granted in October 2020 for construction of a mixed-use development.

Planning Authority Ref. 2877/21 – Permission granted in November 2021 for amendments to the development permitted under Planning Authority Ref. 4778/19

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. The lands are occupied by a construction site with enabling works commenced in late 2020. In May 2022 construction was paused due

to a title issue in relation to the railway line owned and operated by CIE. Consequently there has been no construction activity on site since May 2022. In early 2023 it was decided to protect works on the site until resolution of the aforementioned matter. It is considered that the lands are not vacant or idle as they are occupied by a commercial development under construction and do not satisfy the criteria set out in section 653B (c)(ii).

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the lands are in scope because they:

- Are zoned for a mixture of uses, including residential use,
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity,
- Are 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 of a trade or profession being carried out on, or adjacent to, the land, and
- Meet the other qualifying criteria in Section 653B of the Taxes Consolidation Act as amended.

6.0 The Appeal

6.1. Grounds of Appeal

The following points are made in support of the appeal:

- It is considered that the lands do not meet the relevant criteria set out under Section 653B(a)(ii) and (c)(ii) of the legislation.
- Disputes that the lands are vacant or idle. The site is currently occupied by a commercial development under construction and, therefore, does not satisfy the criteria for inclusion on the map set out in subsection c(ii).

- The construction site is necessary for the implementation of planning permissions Reg. Ref. 4778/19 and Reg. Ref. 2877/21. Enabling works commenced in late 2020.
- A Commencement Notice was served on the Local Authority in July 2021, with works including piling undertaken. The appellant submits that €11 million has been spent on developing the site to date. In May 2022 construction was paused due to a title issue in relation to the railway line owned and operated by CIE. Consequently there has been no construction activity on site since May 2022. In early 2023 it was decided to protect works on the site until resolution of the issue.
- While the local authority's report suggests there is little construction activity above ground, substantial substructure works have taken place, including excavations, piling and the formation of the basement structure. The substructure for the development is particularly complex by design as the proposed Metrolink runs beneath the site and considerable engagement with the design team of Transportation Infrastructure Ireland was required. The Local Authority has not given due consideration to the extent of works carried out on foot of a permission.
- Noting there is no exemption for sites which have been developed on foot of a permission, it is considered that the lands fall within the scope of land 'required for and integral to a trade or profession,' namely construction. The works undertaken to date are integral to the future permitted use of the site as an office development. The development undertaken on foot of the aforementioned permissions means that the land is not vacant or idle and it is considered, therefore, that the site is required for or integral to the carrying out of the construction trade.
- All development contributions have been paid in respect of the permitted development, reflecting the landowner's intention to develop the lands as soon as possible.

The appeal includes the following attachments:

- Appendix 1: Determination of Local Authority.

- Appendix 2: Acknowledgement of submission.
- Appendix 3: Site Location Map.
- Appendix 4: Commencement Notice validation from Local Authority.
- Appendix 5: Correspondence regarding development contributions.
- Appendix 6: Acknowledgement from Local Authority regarding payment of bonds.

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 zoned 'Zone Z5 – 'City 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 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 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 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 they are occupied by a commercial development presently under construction. 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 have been under construction, which has temporarily ceased, does not qualify for omitting the lands from the RZLT map under section 653B.

- 7.6 Pending the remedying of a title issue associated with the overhead railway line, construction activity has ceased on the lands. As such, I consider the lands to be vacant or idle in accordance with section 653B (c)(ii).
- 7.7 I note the appellant's assertion that the lands are required for and integral to a trade or profession, i.e. the construction trade, and therefore the lands are not vacant or idle. If the site was an active construction site, it is not considered that it would meet the criteria for exclusion as set out; the construction site is temporary and ancillary to planning permission granted. Therefore, I am not satisfied that the temporary construction activity on site associated with a live planning permission is 'integral to, the operation of a trade or profession being carried out on, or adjacent to, the land' and therefore compliance with step 1 is not achieved. This is reinforced in Section 3.2.3 'Consideration of Submissions on Inclusion on Maps' of the Guidelines which 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 lands are considered 'in-scope.'
- 7.8 The appellant has also raised matters relating to finance and payment of contributions / bonds to the Local Authority on foot of planning permissions on the lands. These matters 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.
- 7.7. Having regard to the foregoing I consider that Parcel ID Parcel ID DCC000064312 should remain for inclusion on the final RZLT Map given the land is 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 DCC000064312 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

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (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 Parcel ID DCC000064312 on the RZLT Final Map zoned 'City 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 finance and payment of contributions / bonds to the Local Authority on foot of planning permissions on the lands 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 within Dublin city centre 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 Z5 'City Centre' zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000214

Appeal by Esprit 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 28th day of June 2024 in respect of the site described below.

Lands at: Townsend Street, Shaw Street and Spring Garden Lane, Dublin 2

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 DCC000064312 on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (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 Parcel ID DCC000064312 on the RZLT Final Map zoned 'City 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 finance and payment of contributions / bonds to the Local Authority on foot of planning permissions on the lands 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 within Dublin city centre 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 Z5 'City Centre' zoning objective that applies to these lands.

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

26th September 2024