



An
Bord
Pleanála

Inspector's Report ABP-320403-24

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	42a Parkgate Street, Dublin 8 D08E3FY
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	RZLT-000217
Appellant(s)	The Davy Platform ICAV
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The brownfield site is located at 42A Parkgate Street, Dublin 8. It is bound to the north by Parkgate Street, to the east by the junction of Sean Heuston Bridge and Parkgate Street, to the south by the River Liffey and to the west by an office and residential development. Heuston Station is on the opposite side of the River Liffey to the south of the site. The eastern portion of the site was previously used by Hickey's Fabrics. The large warehouse building on the lands is in a derelict state and its windows are boarded up.
- 1.2. The lands comprise two Land Parcels on the final RZLT Map. Parcel ID DCC000064315 is at the eastern side of the lands while Parcel ID DCC000064183 relates to the larger western portion of the lands.

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 zoned for a mixture of uses including residential use.
- 2.2. The lands are located in a conservation area associated with the River Liffey.
- 2.3. The lands are situated within the designated zone of archaeological potential for the historic city of Dublin (DU018-020); there are however no recorded sites on the appeal lands or in the immediate area.
- 2.4. The site contains a number of protected structures (Ref No. 6320), comprising riverside stone wall, turret at eastern end, square tower on river front and entrance stone arch on Parkgate Street.
- 2.5. The strip of land at the southern end of the site adjoining the river is zoned Z9 - Amenity / Open Space Lands / Green Network. These lands are not included in the Final RZLT map.

3.0 Planning History

3.1. RZLT Appeal

ABP-317946-23 / RZLT000178 - Confirm the determination of the local authority to include lands at 42A Parkgate Street, Dublin in the RZLT MAP.

Other Applications

PA Reference LRD6042/23 – Permission granted / split decision in March 2024 for a Large Scale Residential Development seeking amendments to SHD1* as amended by SHD2*, and Section 146B amendments to include 40 additional apartments.

ABP Reference PL29S.310567 (SHD No.2*) – Permission granted in 2021 for a SHD comprising 198 no. Build to Rent apartments in a 29 storey tower building and associated site works.

ABP Reference ABP-306569-20 (SHD No.1*) – Split decision in May 2020 to grant permission for 321 no. Build To Rent units and refuse permission for Block A (160 no. apartments).

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 ‘warehouse/storage’ use is not unauthorised, there is an active storage use on the lands and the lands are not therefore vacant or idle. Commercial rates are paid. Warehouse use falls within the meaning of a trade or profession. The site is used to store materials in connection with the owner’s business of housing delivery. Planning permission has been granted for the lands and preparations are commencing to implement the permission. Liability for the tax should be suspended for the lifetime of the permission. A legal opinion that the lands are out of scope for the RZLT is included with the submission.

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 be connected, to public infrastructure and facilities, with sufficient service capacity, as evidenced by their city centre location and past planning permissions on the land
- Are vacant / idle, as the lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land
- Meet the other qualifying criteria of 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:

- The appeal lands are not vacant or idle. The lands are used for storage purposes, which is an established and authorised use on the lands. Commercial rates are paid to the Local Authority.
- The use of a warehouse is in principle capable of falling within the meaning of operation of a trade or profession.
- In the Tax and Duty Manual, Revenue treats the reference to 'trade or profession' as synonymous with 'a business.'
- Current warehouse storage use is consistent with its last and long established use, and it has been in active storage use by the current owners since 2019.
- It is inaccurate to describe the lands as vacant or idle. The storage is used in connection with the owner's trade / business which relates to housebuilding in the city.
- Object in principle to imposition of RZLT as a means to incentivising development.

- The developer / applicant is committed to the development of the site and implementation of the permitted development.
- It would be reasonable to suspend the tax liability for the duration of the life of the permission.
- Accepts that the site has access and can be connected to public infrastructure and facilities.

Appendices to the appeal are set out below:

- Appendix A – Legal opinion that the lands are out of scope for the RZLT
- Appendix B – Evidence of commercial rates payment to Local Authority
- Appendix C – Correspondence confirming that the warehouse premises on the site is being used for storage purposes
- Appendix D – Evidence of security monitoring costs
- Appendix E – Site Enabling Works Commencement Notice dated March 2021

7.0 **Assessment**

7.1. The content of the appeal submission are noted. The site identified for inclusion on the RZLT map is zoned for a mixture of uses, including residential use and the Planning Authority determined that the site remain on the RZLT map. The site is within the city centre with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.

7.2. 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.

I note Appendix 2 of the appeal which comprises correspondence from Tanick Development Unlimited confirming it is using the Parkgate Street warehouse to store construction materials purchased for future use on a Lansdowne Place development in Ballsbridge. Furthermore, the Legal Opinion submitted as Appendix A to the appeal notes under point 19 that the warehousing and storage use 'is supportive of and in connection with a major construction project in Ballsbridge.' Having regard to this information my opinion is that the storage and warehouse uses are not required for, or integral to a trade or profession **being carried out on the land or adjacent to the land** and therefore the site is vacant or idle having regard to the 'vacant or idle land' meaning set out in the RZLT Guidelines (**my emphasis**). Therefore I consider that the site cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended.

- 7.3. Section 3.2.3 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) states the following:

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.

Section 3.3.2 of the Guidelines also confirms that An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only.

The grounds of appeal include matters relating to planning permissions on the lands, commencement of development on the lands, engagement in the planning process, and opposition to the imposition of the tax on homebuilders. These grounds of appeal relate to matters outside of the qualifying criteria in section 653B; as such they cannot be considered in the appeal process and should be dismissed.

- 7.4. Having regard to the foregoing I consider that the land should remain for inclusion on the final RZLT Map given the site is zoned for a mixture of uses including residential development, that it is vacant or idle and that it does 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 recommend that the board confirm the determination of the Local Authority and that the indicated site be 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 IDs DCC000064315 and DCC000064183 on the RZLT Final Map zoned Z5-City Centre are considered to be within scope of Section 653B(a). The lands are located within an established urban area. 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 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-000217

Appeal by the Davy Platform ICAV 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: 42A Parkgate Street, Dublin 8 D08E3FY

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 IDs DCC000064315 and DCC000064183 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 IDs DCC000064315 and DCC000064183 are zoned Z5-City Centre and are considered to be in scope of section 653B(a). The lands are located within an established urban area. 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 residential 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

9th September 2024