



An
Bord
Pleanála

Inspector's Report ABP-320404-24

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

Location

'Former Chivers Site, Coolock Drive, Coolock, Dublin 17.

Local Authority

Dublin City Council.

Local Authority Reg. Ref.

RZLT 000202.

Appellant

Veni Vidi Vici Ltd.

Inspector

Fergal Ó Bric

1.0 Site Description

The lands subject to this appeal, identified as RZLT 000202 (Parcel ID DCC000062958) are located on the eastern side of Coolock Drive and south of the junction with Greencastle Road. There are existing industrial structures and hardstanding areas on site.

2.0 Zoning

The lands are zoned Z1 (Sustainable Residential Neighbourhoods) in the current Dublin City Development Plan 2022-2028. The zoning objective is: To protect, provide and improve residential amenities. Residential is a permissible use under this land use zoning objective.

3.0 Planning History

The relevant planning history is considered to include the following:

PA reference number RZLT 000058., in 2023 Dublin City Council determined that the lands should be included within the RZLT map. ABP reference 316412-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified as land parcel ID DCC000002691, under PA reference number RZLT 000058. on the RZLT map.

ABP Ref. 305993-19 refers to a decision to grant alterations to permitted development under ABP 304346-19.

ABP 304346-19 refers to a grant of permission for the demolition of existing buildings and construction of 495 no. BTR apartments, creche, café, gym and associated site works.

There are a number of older applications for the lands included in the local authority assessment.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their lands removed from the RZLT final map on the basis that they have an extant planning permission on the lands under Board reference number 304346-19-for an SHD residential development largely pertaining to a development of apartment units, and including a creche, café and gymnasium. The appellants state that they have been unable to commence development due to procedural issues with planning legislation and a changed funding environment since the grant of permission was secured. The presence of a trunk c.450mm diameter public foul sewer passing through the site that needs to be diverted to facilitate the development of the site. There is no gas supply to the site. The site is used twice a year for a community funfair and throughout the year for the storage of funfair equipment.

The appeal submission sets out that a tow truck company also uses the site for storage as does a local construction company who store plant and equipment on the site.

The appeal submission sets out that permitted development would be co-ordinated to facilitate the wayleave that would be required for the diverted water main which traverses the site and the position of all buildings outside of the 6-metre wayleave to comply with Irish Water requirements.

5.0 Determination by the Local Authority

The local authority determined to include the site on the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

The reasons set out by the Local Authority are as follows:

The lands:

- a) Are zoned solely or primarily for residential use.

- b) Have access to, or can be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, as evidence in consultation with Irish Water and by the grant of planning permission by Dublin City Council for residential development on the lands,
- c) Do not qualify for an exemption under Section 653B (c) of the Taxes Consolidation Act 1997 as amended, as it has not been demonstrated that the existing uses on the lands on the lands have the benefit of planning permission/planning exemptions and the referred uses are not liable for commercial rates and do not provide services to residents of adjacent residential areas,
- d) Satisfy the other relevant criteria under section 653B of the TC Act.

6.0 The Appeal

6.1. Grounds of Appeal

- The decision taken by Dublin City Council (DCC) was not informed by a satisfactory infrastructural assessment of the lands as required under Sections 3.1.1 and 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022.
- The site has an extant permission and lands where connection to services would require materially significant works or statutory consents should be considered out of scope. The DCC assessment did not consider these factors.
- Necessary infrastructural works (roads, foul sewer drainage, water supply and utilities) are significant, therefore, the lands should be deemed out of scope.
- The notification of determination issued by DCC on the 17th day of June 2024 is invalid, as it states the name of the landowner is Mr. Maurice Gillick. however, the submission made to DCC on the 24th day of March 2024, clearly states the site owner to be Veni Vidi Vici Ltd.

- The DCC Determination does not comply with the provisions of the Tax Consolidation Act 1997(as amended) and should be overturned by An Bord Pleanála.

7.0 Local Authority Submission

The local authority made no comment in relation to this appeal.

8.0 Assessment

The appellant raises the issue of the name of the landowner included within the notification of determination issued by the local authority on the 17th day of June 2024. This is considered to be a procedural matter and outside of the scope of the provisions to be considered under Section 653B of the Taxes Consolidation Act 1997 as amended,

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”.

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion within the RZLT 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 Z1 (Sustainable Residential Neighbourhoods) and, therefore, within scope of section 653B(a). The local authority determined the lands to be in scope having regard to the residential zoning pertaining to the lands.

Whilst it is submitted that infrastructure elements/connections may not be in place at present, these would be expected to be provided in conjunction with the development of a site, generally developer led.

There is no correspondence on file from Uisce Eireann. The local authority in their submission assessment refer to correspondence received from Uisce Eireann (UE) dated the 25th day of April 2024. The UE correspondence sets out that there is water supply and wastewater treatment capacity available to service the lands and that the lands are serviced for water from the watermain along Coolock Drive and that service improvements may be required depending on the size of the development and that a foul sewer runs through the site, parallel to the Santry River, UE state that the presence of the foul sewer does not preclude the development of the site, as the sewer could be diverted by the developer.

Page 8 of the Residential Zoned Land tax- Guidelines for Planning Authority June 2022 (RZLT Guidelines) sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Issues relating to capacity were not raised. Based on the information available, I have no evidence that this is an issue.

Pg. 24 of the RZLT guidelines state:

If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.

Of relevance, I note that the site has been the subject of a recent grant of planning permission ABP 304346-19 refers to a grant of permission for the demolition of existing buildings and construction of 495 no. BTR apartments, creche, café, gym and associated site works. The grant of permission clearly establishes that the site has the capacity to accommodate residential development. I have reviewed the conditions attached to this grant of planning permission and note there is no specific condition relating to wastewater upgrades or constraints that would preclude development coming forward on the site.

The provision of infrastructure to the subject lands are considered to be in the control of Dublin City Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

With respect to the trunk sewer to traverse a section of the site and provision of a way leave. I note the nature of the infrastructure, given the scale of which and the provision of a way leave that has been integrated in the layout of a permitted residential development on this site previously. I do not consider that it would meet the criteria for exclusion on those grounds and therefore the appeal on these grounds should be dismissed.

With regard to the provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting and water connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Overall, I am of the opinion that is reasonable to conclude that the site may have access to public infrastructure and utilities, including roads and footpaths as such complies with criteria for inclusion under section 653B(b)

The use twice a year by a community funfair for recreational/leisure purposes is not a criterion for exclusion set out in section 653B(c).

With regard to the use of the lands by a tow company and local construction company for storage purposes. As noted on page 11 of the 2022 RZLT Guidelines that *'land which is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates'*. On the basis of the information submitted, I have no evidence that this is the case. The local authority determined that the lands are within scope. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i). .

Having regard to the foregoing I consider that the lands identified as RZLT 000202 (Parcel ID DCC000062958), meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

Conclusion

Page 8 of the Residential Zoned Land Tax - Guidelines for Planning Authority, June 2022 (RZLT Guidelines) sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Issues relating to wastewater capacity were raised by the appellants and it is contended that there is adequate water and wastewater treatment capacity available to service the lands. The appellant has not submitted any documentary or other technical information to contradict this contention.

UE in their correspondence to the local authority have confirmed that services are available and that there is sufficient water and waste water treatment capacity to serve the development of the lands. I consider that based on this information, it is reasonable to consider that there is access to/or a connection can be facilitated to sewer and water connections on land that is the control of the local authority and/or the landowner. On this basis, the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

The lands identified as RZLT 000202 (Parcel ID DCC000062958), are located on lands zoned for Sustainable Residential Neighbourhood purposes, it is reasonable to consider that the site has access to services.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000202 (Parcel ID DCC000062958), meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended, should be retained on the map and the grounds of appeal dismissed .

9.0 Recommendation

I recommend that the board confirm the determination of the local authority and that the indicated site be retained on the map.

10.0 Reasons and Considerations

The lands identified as RZ:LT-000202 (Parcel ID number DCC000062958 located on Z1 Sustainable Residential Neighbourhoods zoned lands identified within the current Dublin City Development Plan are considered in scope of Section 653B(b) of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area with services available, and 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 Sustainable Residential Neighbourhoods 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: RZ:LT-000202

Appeal Veni Vidi Vici Ltd. in accordance with section 653J of the Taxes

Consolidation Act 1997 as amended, against the inclusion of the land on the final 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: Former Chivers Site', Coolock Drive, Coolock, Dublin 17.

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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number DCC000062958 and Local Authority reference number RZLT-000202 should remain on the RZLT 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 RZ:LT-000202 (Parcel ID number DCC000062958 located on Z1 Sustainable Residential Neighbourhoods zoned lands identified within the current Dublin City Development Plan are considered in scope of Section 653B(b) of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area with services available, and 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 Sustainable Residential Neighbourhoods 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.

Fergal Ó Bric
Planning Inspectorate

9th day of September 2024