



An
Bord
Pleanála

Inspector's Report ABP-320409-24

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 26-29, George's Street, Dun Laoghaire, Co. Dublin

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

DM24/0021

Appellant(s)

Better Value Unlimited Company

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject lands are located on the southern side of George's Street Upper in Dun Laoghaire, Co. Dublin. The lands accommodate four units within a three-storey red brick building, which contain four vacant commercial units at ground floor level and four vacant apartments above. Anglesea Lane adjoins the building at its eastern side. The subject lands are identified as Land Parcel ID DELA00002282 on the RZLT map.
- 1.2. There is another RZLT appeal by the same appellant in respect of lands at Monkstown Crescent, Blackrock, Co. Dublin (An Bord Pleanála Ref. ABP-320391-24 refers).

2.0 Zoning and Other Provisions

- 2.1. The subject lands are zoned 'MTC – Major Town Centre' in the Dun Laoghaire Rathdown County Development Plan 2022-2028. This zoning objective seeks 'To protect, provide for and-or improve major town centre facilities.' Residential use is permitted in principle within the 'MTC' zoning objective.
- 2.2. Policy Objective RET11 of the Dun Laoghaire Rathdown Development Plan 2022-2028 states the following:

Active Street Frontages Non-Retail Uses: It is a Policy Objective of the Council to control the provision of non-retail uses at ground floor level in the principal shopping streets of Major Town Centres and District Centres and also within the shopping parades of mixed-use Neighbourhood Centres.

3.0 Planning History

Planning Authority Ref. D14A/0728 refers to a March 2015 decision to grant permission for four new ground floor entrances to the rear of four existing upper floor apartments, and separation and amalgamation of four ground floor units to form two shop units.

An Bord Pleanála Ref. PL06D.235805 / Planning Authority Ref. D09A/0019 refers to a May 2010 decision to grant permission for a new three storey retail development and restaurant.

Planning Authority Ref. D07A/0658 refers to an August 2007 decision to grant permission for amalgamation of 4 no. existing units, alteration to the existing shop fronts and erection of 2 no. external signs illuminated with projecting light fittings.

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.
- The site has not been allocated for housing in the Dun Laoghaire County Development Plan 2022-2028.
- The lands are zoned 'MTC' and are part of Dun Laoghaire's Town Centre Quarter. The Development Plan supports the consolidation of the town centre, the refurbishment and redevelopment of existing buildings and provision of major town centre facilities.
- It is a policy objective of the Council to control the provision of non-retail uses at ground floor level along principal shopping streets of Major Town Centres, including George's Street.

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:

- The inclusion of the subject site would be inconsistent with the objectives of the Dun Laoghaire County Development Plan 2022-2028.
- The subject site has not been allocated for housing in the Development Plan's core strategy and whilst residential uses are permissible in principle on MTC zoned lands, their primary role remains retail, commercial and residential uses.
- The subject site has multiple levels and uses and at a minimum, the site's ground floor shop units should be excluded from RZLT.
- The Development Plan seeks to control the provision of non-retail uses at ground floor level in the principal shopping streets of MTCs. To permit residential uses at ground level within the subject site would be contrary to the local authority's objective of limiting non-retail uses at ground floor level (Policy Objective RET11 refers).

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 'MTC – Major Town Centre' within which residential use is permissible and are therefore within scope of section 653B(a)(ii). While I accept the appellant's contention that the subject lands have not been allocated for housing in the core strategy as set out in the Dun Laoghaire Rathdown County Development Plan 2022-2028, the fact remains that residential uses are permitted in principle on the lands given the mixed use zoning which applies and, as such, the lands are in scope pursuant to section 653(a)(ii).

- 7.3 Having regard to section 653B(b), these brownfield lands are centrally located within Dun Laoghaire town 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 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. The Local Authority has confirmed and determined that the lands are vacant or idle and this has not been challenged or disputed in the appeal submission.

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 lands are vacant and are not required for or integral to a trade or profession being carried out on the land or adjacent to the land. 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. As such, I concur with the Local Authority's determination that the lands are vacant or idle in accordance with section 653B (c)(ii).

7.6 The appellant argues that provision of residential uses at ground floor level within the site would be contrary to the Development Plan objective to limit non-retail uses at ground floor level in principal shopping streets of major town centres and as such, at a minimum, the site's ground floor shop units should be excluded from RZLT. I note that Policy Objective RET11, to which the appellant refers, seeks to 'control' the provision of non-retail uses at ground floor level in such locations. In my view this objective does not prohibit non-retail uses at ground floor level. The fact remains that the lands are zoned for mixed-use purposes, including residential use, which is permitted in principle within the 'MTC' zoning objective and, in this context, the entirety of the lands are considered to be in-scope, given that they accord with the criteria set out in section 653B (a)(ii) of the legislation.

7.8 Having regard to the foregoing I consider that Parcel ID DELA00002282 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 DELA00002282 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 DELA00002282 on the RZLT Final Map zoned 'MTC - Major Town 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). While the subject lands have not been allocated for housing in the core strategy of the Dun Laoghaire Rathdown County Development Plan 2022-2028, residential use is permitted in principle at this location, having regard to the mixed use zoning which applies to the lands, and therefore, the lands are in scope pursuant to section 653(a)(ii). While Development Plan Policy Objective RET11 seeks to 'control' the provision of non-retail uses at ground floor level in areas including the principal shopping streets of Major Town Centres, this Policy Objective does not prohibit non-retail uses at ground floor level in such areas. The entirety of the lands are zoned for mixed-use purposes, including residential use, which is permitted in principle within the 'MTC' zoning objective and, in this context, all of 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: DM24/0021

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 25th day of June 2024 in respect of the site described below.

Lands at: 26-29 George's Street, Dun Laoghaire, 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 DELA00002282 on the final map.

Reasons and Considerations

The lands identified as Parcel ID DELA00002282 on the RZLT Final Map zoned 'MTC - Major Town 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). While the subject lands have not been allocated for housing in the core strategy of the Dun Laoghaire Rathdown County Development Plan 2022-2028, residential use is permitted in principle at this location, having regard to the mixed use zoning which applies to the lands, and therefore, the lands are in scope pursuant to section 653(a)(ii). While Development Plan Policy Objective RET11 seeks to control the provision of non-retail uses at ground floor level in areas including the principal shopping streets of Major Town Centres, this Policy Objective does not prohibit non-retail uses at ground floor level in such areas. The entirety of the lands are zoned for mixed-use purposes, including residential use, which is permitted in principle within the 'MTC' zoning objective and, in this context, all of 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.

John Duffy
Planning Inspector
30th September 2024