



An
Bord
Pleanála

Inspector's Report ABP-320419-24

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 White Heather Industrial Estate and a commercial premises at 12A St. James Terrace

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000197

Appellant(s)

U and I (White Heather) Limited

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The brownfield lands accommodating the White Heather Industrial Estate are located to the north of the Grand Canal and south of the South Circular Road in Dublin 8. The lands contain a number of warehouse units facing onto a central car park and access road. The lands comprise one Land Parcel on the final RZLT Map; Land Parcel ID DCC000062966 refers. The An Post depot is located immediately east and outside of the land parcel.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z1 – ‘Sustainable Residential Neighbourhoods’ in the Dublin City Development Plan 2022-2028. This zoning objective seeks ‘To protect, provide and improve residential amenities.’
- 2.2. While the lands are located within a conservation area associated with the Grand Canal, they do not accommodate any protected structures or national monuments.

3.0 Planning History

RZLT Appeal

An Bord Pleanála Ref. ABP-316902-23 (Planning Authority Ref. RZLT-00084) refers to a July 2023 decision to include the subject lands, excluding the An Post Depot, on the RZLT map. This decision was the subject of Judicial Review proceedings which were struck out by the High Court.

Strategic Housing Development (SHD) Application

An Bord Pleanála Ref. ABP-TA29S - 313278 refers to an application for the demolition of all existing buildings on site except 307/307a South Circular Road, the construction of 335 no. residential units (7 no. houses, 328 no. apartments), creche and associated site works. No decision has been issued to date.

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 following basis:

- The land does not meet the criteria for inclusion as set out in the relevant legislation.
- All of the units have the benefit of planning permission.
- The operations fall under the definition of commercial trade and business enterprise.
- All of the units are listed with the Valuation Office.
- All of the occupied premises provide employment, including to the adjoining residential area.
- Occupiers provide services to adjoining residential areas.
- There is no extant permission to redevelop the lands for residential purposes.
- The landowner would face challenges in seeking to secure vacant possession to facilitate redevelopment.

5.0 Determination by the Local Authority

5.1 The Local Authority determined that the brownfield lands satisfy the relevant criteria as set out in section 653B on the basis that they:

- Are zoned solely or primarily for residential use.
- Have access or can be connected to public infrastructure and facilities
- Do not qualify for an exemption under Section 653B(c)(i) of the Taxes Consolidation Act 1997 as amended, as it is reasonable to consider that existing uses do not provide services to residents of adjacent residential areas.
- Satisfy 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:

- Uisce Éireann has previously confirmed that significant upgrade works are required to accommodate a water connection for the SHD application. As such the lands are not considered to be serviced without a significant upgrade and where third parties are required to provide permission for the connection.
- Water supply capacity in the area is unlikely to have increased in the intervening period.
- The subject lands are in use and liable for commercial rates. It is not accepted that the lands can be liable for both commercial rates and RZLT.
- The site is not vacant or idle as it is actively occupied with existing operations on the lands.
- The site should be excluded from the map having regard to Section 653B(b), (c) (i) and (c)(ii) of the Finance Act 2021.

The following documents were appended to the appeal:

Appendix I: A copy of the Local Authority Determination

Appendix II: Location map

Appendix III: Pre-connection Enquiry – Response from Uisce Eireann

Appendix IV: Submission on Draft RZLT Map (summarised under section 4.0 above)

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 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion 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 Zone Z1 – ‘Sustainable Residential Neighbourhoods’ and are considered within the scope of section 653B(a)(i).
- 7.3 The site is within Dublin city and it is reasonable to consider that the land may have access to or 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 for such development.
- 7.4 The appellant contends that the lands cannot be considered to be serviced given that a significant upgrade is required in water supply infrastructure. It is clear that the appeal lands are serviced by water infrastructure. Notwithstanding the need for upgrades to water supply infrastructure, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, ‘Serviced Land Definition’, which states “Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.” As per the guidelines, upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

I note that Uisce Éireann's (UÉ's) Water Supply Capacity Register for Dublin City and suburbs, published in June 2023, is stated to have 'Capacity Available – Level of Service improvement required.' In this context the Capacity Register notes that capacity is available to meet 2032 population targets and notes that 'Leakage reduction and/or capital investment will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process.' Having regard to the foregoing it is clear that there is water supply capacity available to meet 2032 population targets.

- 7.5 Section 653B(c)(i) of the Taxes Consolidation Act 1997, as amended, provides an exemption in respect of lands zoned for residential use, but in use as 'premises' that is 'reasonable to consider is being used to provide services to residents of adjoining residential areas.' It must not be an unauthorised use and it must be subject to commercial rates. I acknowledge that the site is in commercial use and the Rates Section of the Local Authority has confirmed several premises are liable for rates. I have reviewed the uses in the industrial estate. There are two units occupied by Storage World Dublin which offers personal storage facilities to the public. BSS Limited are involved in the supply and assembly of pipeline and heating solutions and are open to trade and public customers. The Irish Cancer Society occupies a unit used for storage and onward distribution to its retail outlets. 12A St. James Terrace is vacant as is Unit 303. In my opinion, and upon review of the aforementioned uses within the industrial estate, I do not consider that the businesses in operation provide services availed of on a daily basis by residents of adjacent residential areas. Therefore, I conclude that the exemption set out in section 653B(c)(i) of the Act is not applicable to the lands.
- 7.6 The challenges that may be encountered in seeking to secure vacant possession to facilitate redevelopment are matters for consideration between the landowner and tenants and are not matters for consideration in this appeal process.
- 7.6 The issue of lands being vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, relates to lands zoned for a mixture of uses only, and therefore this provision does not apply in this instance, given that the subject lands are zoned primarily for residential use.

7.7 I consider that the lands should remain for inclusion on the final RZLT map as the site is appropriately zoned for residential development and they have development potential. The subject lands meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

I consider that the lands identified as Parcel ID DCC000062966 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final 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 DCC000062966 on the RZLT Final Map zoned Z1 ‘Sustainable Residential Neighbourhoods’ are considered to be within scope of Section 653B(a). The lands are located within Dublin city and have access to or can be connected to public infrastructure and facilities including water supply infrastructure. The Uisce Éireann water supply capacity register confirms capacity to serve the lands. 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 zoning objective that applies to these lands. It is not considered that the premises operating on the lands provide services to residents of adjoining residential areas. The lands are not vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, as this provision relates to lands zoned for a mixture of uses only, and therefore does not apply to the lands, given that they are zoned primarily for residential use.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000197

Appeal by U and I (White Heather) 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 17th day of June 2024 in respect of the site described below.

Lands at: White Heather Industrial Estate and 12A Saint James Terrace, Dublin 8

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 DCC000062966 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 DCC000062966 on the RZLT Final Map zoned Z1 ‘Sustainable Residential Neighbourhoods’ are considered to be within scope of Section 653B(a). The lands are located within Dublin city and have access to or can be connected to public infrastructure and facilities including water supply infrastructure. The Uisce Éireann water supply capacity register confirms capacity to serve the lands. 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 zoning objective that applies to these lands. It is not considered that the businesses operating on the lands provide services availed of on a daily basis by

residents of adjacent residential areas. The lands are not vacant or idle as referred to in section 653B (a)(ii) of the Taxes Consolidation Act 1997, as amended, as this provision relates to lands zoned for a mixture of uses only, and therefore does not apply to the lands, given that they are zoned primarily for residential use.

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

23rd September 2024