



An
Bord
Pleanála

Inspector's Report ABP-320429-24

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

16-17 Richmond Street South, Dublin
2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000213-A

Appellant(s)

Gordon Properties Limited

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The brownfield lands are located at Nos. 16-17 Richmond Street South and are bounded by hoarding to the front / west along Richmond Street South. The lands, the subject of this appeal, adjoin a linear strip of land to the north in the ownership of Dublin City Council. Adjoining lands to the south of the subject lands are under construction. The subject lands form part of the site compound used for adjoining lands which are under construction with site cabins on the lands.
- 1.2. The lands comprise part of Land Parcel ID DCC000064290 on the final RZLT Map.
- 1.3. There is a concurrent appeal, ABP-320462-24, relating to nearby lands at 8-14 Richmond Street South, which fall within the same land parcel as this appeal.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z10 – ‘Inner Suburban and Inner City Sustainable Mixed-Uses’ in the Dublin City Development Plan 2022-2028 (Zoning map E refers). This zoning objective seeks ‘To consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses.’ The lands are zoned for a mixture of uses including residential use.
- 2.2. The eastern part of the subject lands are subject to a conservation area zoning.
- 2.3. Lands in the ownership of Dublin City Council adjoining the subject lands to the north are proposed to be disposed to the appellant. Dublin City Council Report No.251/2022 refers and states the following: ‘The Housing Department and the City Architects have confirmed that the site is not suitable nor feasible for residential development unless it is integrated into a larger site.’

3.0 Planning History

Appeal lands and adjoining lands

An Bord Pleanála Ref. ABP-318150-23 (Planning Authority Ref. 4148/23) relates to a current first party appeal for demolition of extension to a protected structure, construction of a mixed use building (up to eight storeys) and associated works at

11/12 Richmond Street South, Dublin 2, D02 HX76, 13 Richmond Street South and 17 Richmond Street South, Dublin 2.

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 for the following reasons:

- The land is not vacant or idle as it is required for and integral to a trade (property development) and will be required for office use in the near future. No unauthorised development is taking place and no enforcement action has been taken.
- It is not the landowner's intention to develop residential uses on the lands and this approach is consistent with the Z10 mixed-use zoning objective. Therefore the placement of the sites on the RZLT map is inappropriate and should be removed.
- The west and north of the lands are bound by a narrow lane and existing development as well as a residential development up to the eastern boundary. The only aspects of the lands not physically constrained is the Richmond Street South side. As such any residential development would be single aspect only and would have substandard amenity due to overlooking impacts from existing uses. Therefore a residential development which would meet the required standards of amenity would not be possible and the sites are therefore 'affected, in terms of its physical condition, by matters of a sufficient extent to preclude the provision of dwellings.'

5.0 Determination by the Local Authority

5.1 The Local Authority determined that the lands satisfy the relevant criteria as set out in section 653B on the basis that 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 temporary construction compound / unused lands are not considered 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 land is not vacant or idle. The land is required for and integral to a trade, namely property development and will be required for office uses in the near future. The land is being rented out and actively used by a construction company which is completing development to the east of the site. There are pre-fabricated cabins on the lands with administrative offices.
- No unauthorised development is taking place; no enforcement notice has been issued and the public house use on the northern part of the lands is authorised.
- In terms of the Z10 mixed use zoning of the lands the Development Plan states that 'For very small sites, typically less than 0.5 ha, flexibility on mix requirement may be considered on a case-by-case basis, where it can be demonstrated that the proposal would not result in an undue concentration of one particular land-use on the Z10 landholding as a whole.' The assessment of the mix of uses is against the overall Z10 landbank and the application site was significantly below 0.5 ha at 0.22 ha. The intention of the Z10 zoning is to ensure a sufficient mix across the entire Z10 zoned area rather than on individual sites. It is inappropriate to assess the subject site in isolation of its wider Z10 surroundings and it is incorrect to apply the residential requirement to the site in isolation.

Figure 4 of the appeal submission shows that residential use is the most significant use in the Z10 landbank and it is considered that the land use mix objective of the Development Plan is comfortably complied with. It is not the intention to develop residential uses on the lands which is consistent with the provisions of the mixed-use zoning objective; therefore inclusion of the lands on the RZLT map is inappropriate and should be removed.

- Having regard to 653B (c) it is considered that due to the configuration and context of the site, that the provision of residential development of an acceptable standard would not be possible. The west and north of the sites are bound by a narrow lane and existing development as well as a residential development up to the eastern boundary. The only aspects of the sites not physically constrained is the Richmond Street South side. As such any residential development would be single aspect only and would have substandard amenity due to overlooking impacts from existing uses. Therefore, a residential development which would meet the required standards of amenity would not be possible and the sites are therefore 'affected, in terms of its physical condition, by matters of a sufficient extent to preclude the provision of dwellings.' The City Council's Housing Department has determined that their lands are not suitable for residential development.

The appeal is accompanied by Appendix A comprising the previous submission made to the Local Authority and associated appendices as follows:

- Site Location Map
- Receipt of Rates Bill Payment
- DCC report on proposed disposal of 15 and rear of 14 Richmond Street South to the appellant
- Determination by DCC and Evaluation Report

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 Z10 – 'Inner Suburban and Inner City Sustainable Mixed-Uses' and are considered within the scope of section 653B(a)(ii).
- 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. I note that no water and / or wastewater capacity reasons have been identified that would prevent the development of these lands for residential purposes.
- 7.4 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. 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 appellant states the land is currently used in connection with development activities in the immediate area. The land is rented out to a construction company for use as a temporary construction compound associated with a live planning permission on a near-by site. This in itself demonstrates the vacant and idle nature of the land. I am not satisfied that the temporary construction compound on the land is 'integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.' Having regard to the foregoing, I consider that the land is in scope and cannot avail of the exclusion as set out under section 653B(c)(ii) of the Taxes Consolidation Act 1997 as amended.

- 7.5 Having regard to section 653B(c) the appellant contends that the subject land by reason of its configuration, context and existing development in the immediate vicinity could not facilitate the provision of residential development of an acceptable standard. This matter relates largely to adjoining lands which accommodate existing development and the constraints such development may have on the appeal lands in terms of development proposals. In my opinion, the appeal lands, if integrated with another site, as proposed in the recent planning application (currently on appeal) relating to the subject site and adjoining lands, would not necessarily preclude the provision of dwellings at this location. As such, I do not consider that the exclusion set out in section 653B(c) applies to the subject lands.
- 7.6 I note the matters raised by the appellant in terms of, inter alia, the Z10 zoning objective of the land, that it is not the intention to provide residential uses on the land which is considered to be consistent with the mixed-use zoning objective and that

inclusion of the land on the RZLT map is considered inappropriate. An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only; this ground of appeal is not included in section 653B and cannot be considered in the appeal process. As referred to under section 7.2 above, these mixed-use lands fall within the scope of the tax on foot of section 653B(a)(ii).

8.0 Recommendation

Having regard to the foregoing I consider that the land identified as part of Parcel ID 000064290 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 part of Parcel ID DCC000064290 on the RZLT Final Map zoned Z10 ‘Inner Suburban and Inner City Sustainable Mixed-Uses’ 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 Z10 zoning objective that applies to these lands. The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings. The land is vacant or idle and it does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000213-A

Appeal by Gordon Properties 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 21st day of June 2024 in respect of the site described below.

Lands at: 16-17 Richmond Street South, 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 part of Parcel ID DCC000064290 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 part of Parcel ID DCC000064290 are zoned Z10 'Inner Suburban and Inner City Sustainable Mixed-Uses' 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 Z10 zoning objective that applies to these lands. The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings. The land is vacant or idle and it does not fall within the exemptions as set out under section 653B (c) (i) – (v) 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

26th September 2024