



An
Bord
Pleanála

Inspector's Report ABP-320435-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Lands at Anderson's Quay, Cork City, Cork

Local Authority

Cork City Council

Planning Authority Reg. Ref.

CRK-C272-RZLT2-8

Appellant

Hilltrent Ltd.

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Land at Anderson's Quay, Cork City, Cork (Parcel ID CCLA00042985,CCLA00042986,CCLA00042987,CCLA00042989,CCLA00042990) are located in Cork City centre. The lands accommodate 2 and 3 storey commercial buildings, single storey shops, and areas of hardstanding. To the north, the site adjoins Anderson's Quay, to the west the site adjoins Clontarf Street (R610) and to the south is Oliver Plunkett Street Lower. To the east, the lands adjoin a 3-storey commercial building. The site currently has a vehicular entrance from Anderson's Quay and from Oliver Plunkett Street Lower. The shopfronts of the single storey building that front onto Clontarf Street (R610) appear to be boarded up.

2.0 Zoning and Other Provisions

The relevant plan is the Cork City Development Plan 2022 – 2028.

- The site is zoned ZO 05, City Centre - To consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural and residential growth.
- There is no zoning matrix in this Development Plan. Section 12.17 states that *“For the avoidance of doubt, the following zoning objectives facilitate residential uses in principle, either as a primary objective or as uses open for consideration:*
 - *ZO 1 Sustainable Residential Neighbourhoods*
 - *ZO 2 New Residential Neighbourhoods*
 - *ZO 3 Long-term Strategic Regeneration*
 - *ZO 4 Mixed Use Development*
 - *ZO 5 City Centre*
 - *ZO 6 Urban Town Centre*
 - *ZO 7 District Centres*
 - *ZO 8 Neighbourhood and Local Centres*

- ZO 5.2 states that “*The primary purpose of this zone is to promote the continued economic, civic, cultural and residential growth of the City Centre, and to create a thriving urban community*”.

3.0 Planning History

PA Ref. 0934001, ABP Ref. PL28.236004: On the 12 August 2010 planning permission was granted for the demolition of all structures at the site and the construction of a 9-storey mixed use development. The LA decision was appealed to the Board in respect of Contribution Conditions attached.

PA Ref. 1034671, ABP Ref. PL28.238500: On the 16 June 2011, the Board overturned the LA decision and refused planning permission for amendments to the scheme permitted under TP 09/34001, ABP Ref. PL.28.236004 to include additional office space.

PA Ref. CRK-RZLT-72, ABP Ref. 316712-23: On 21 September 2023 the Board made the decision to confirm the determination of the local authority and retain the subject site on the RZLT map.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that the site is not vacant or idle as it is occupied by Meitheal Mara (Charity Ref. No. 20039011), which is an important social/community use.

5.0 Determination by the Local Authority

The local authority determined that:

Having evaluated the submission, it is considered that the land does constitute land satisfying the criteria as per Section 653E(1)(a)(ii)(I) of the Taxes Consolidation Act, 1997 as amended, therefore it is recommended that the land(s) Site bounded by Anderson’s Quay, Oliver Plunkett Street Lower, and Clontarf Street should be included on the final map for the following reasons:-

- The land is included in the Cork City Development Plan 2022-2028, in accordance with Section 10(2)(a) of the Act of 2000 and is further zone (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use.
- These lands satisfy section 653B(b) of the Act, in that it is reasonable to consider that the land may have access, 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 capacity available for such development.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The site is not vacant or idle. The site is occupied by Meitheal Mara (Charity Ref. No. 20039011).
- Meitheal Mara provides social/community services and is supported by Government Departments.
- The site meets the criteria for exclusion from the RZLT map under Section 653B(iii)(l).
- The appellant is currently working with an approved housing body to potentially provide social housing at the site, and the inclusion of the site on the RZLT will create an obstacle to development.

7.0 Assessment

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”.

The appeal submission has raised grounds that are outside of the scope of the Boards assessment including the development implications of including the site on the RZTL map. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing potential financial or development outcomes as a result of the tax.

The subject site, as shown in Figure 1 of the appeal statement, was the subject of a previous RZLT determination under PA Ref. CRK-RZLT-72, ABP Ref. 316712-23. Under ABP Ref. 316712-23 the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. The grounds of appeal of this previous case are similar to those of the current appeal. I note that the context and character of the site has not significantly changed since this previous decision was made.

The site is zoned ZO 05, City Centre. There is no zoning matrix in the Development Plan, however, Section ZO 5.2 states that one of the primary purposes of Z 05 lands to promote residential growth. In this regard, I consider that the site meets the criteria under Section 653B(a) of the Act.

The appellant states that the site is not vacant or idle and, therefore, does not meet the criteria for inclusion on the RZLT map. In respect of mixed-use lands, Section 653BA(1) of the Act provides a definition for vacant and idle as follows: *“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 Taxes Consolidation Act, 1997, as amended defines “trade” as *“includes vocation and includes also an office or employment”* and “profession” as *“includes vocation”*. As per the Appeal Statement, the subject site is leased and occupied by the Meitheal Mara (Charity Ref. No.

20039011), which operates training, community and educational programmes from the site. While the entirety of the site may be leased by Meitheal Mara, I consider that the poor physical condition of the western portion of the site, comprising the single storey structures on Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985), precludes this area from use by the charity. Given that the structures on Clontarf Street are fully boarded up and in poor condition, it is not reasonable to consider that these areas are used by the charity. Based on the foregoing, I consider that the western portion of the site (Parcel IDs CCLA00042986 and CCLA00042985) is vacant and idle.

The commercial buildings and hardstanding areas in the central and eastern portion of the site, comprising Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990, appear in useable condition. On this basis, it is reasonable to consider that the central and eastern portion of the site are occupied by the charity and are in use by a trade or profession. I note that there is no evidence available that the current use of the site has the benefit of planning permission and appellant has not submitted any information to indicate that the development or use of the site has pre-63 status. Drawing from the foregoing, I consider that the central and eastern parts of the site (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990) are vacant and idle.

The subject site immediately adjoins the public road at Anderson's Quay, Clontarf Street (R610) and Oliver Plunkett Street Lower, and there are existing vehicular entrances to the site on Anderson's Quay and from Oliver Plunkett Street Lower. As the site is currently connected to the road network, it is reasonable to consider that there is sufficient capacity in the network to serve the site.

Given the city centre location of the site, it is reasonable to consider that the site is able to connect to existing water and wastewater networks. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 23 September 2024) indicates that there is spare capacity available at the Carrigrennan WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 23 September 2024) indicates that there is capacity available at the Cork City Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Drawing from the foregoing, I consider that

the subject site can connect to public infrastructure and facilities and, therefore, meets the criteria under Section 653B(b) of the Act.

The subject site does not contain contaminated lands and does not contain any historical or recorded structures or archaeological features that would preclude the provision of dwellings. In this regard, the site meets the criteria under Section 653B(c) of the Act.

The appellant states that the site meets the criteria for exclusion from the RZLT map on the basis that it is occupied by social, community or governmental facilities. It is stated that the services provided by the charity are funded by Government Departments. The appeal statement outlines that Meitheal Mara operate several social and community programmes from the site. As is discussed elsewhere in this report, the western portion of the site comprising the boarded-up shopfronts on Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985) are in poor physical condition. In this regard, it is reasonable to consider that the western part of the site is not integral to or required for the Meitheal Mara programmes and do not meet the criteria for exclusion under Section 653B(iii)(I).

Based on their physical condition it is reasonable to consider that the commercial buildings and hardstanding areas in the central and eastern portions of the site (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990) are integral to the social, community, and educational programmes operated by Meitheal Mara. I consider that the information provided in the appeal statement in respect of the range of services and programmes offered by Meitheal Mara and the status of Meitheal Mara as a registered Charity supported by Government Departments, is sufficient to illustrate that the central and eastern portions of the site meet the criteria for exclusion from the RZLT map under Section 653B(iii)(I).

The appellant states that they are engaging with a housing association in respect of providing social housing at the site. I note that the preparation of a planning application is not listed as a criterion for exclusion from the RZLT map under Section 653B of the Act. In this regard, no part of the subject site meets the criteria for exclusion from the RZLT map under Sections 653B(iii)(II) to (VII), Section 653B(iv) or Section 653B(v).

8.0 Recommendation

Having regard to the foregoing, I recommend that the Board confirm the determination of the local authority in part and set aside the determination of the local authority in part and allow the appeal in part in relation to the lands identified as Land at Anderson's Quay, Cork City, Cork (Parcel ID CCLA00042985, CCLA00042986, CCLA00042987, CCLA00042989, CCLA00042990).

- I recommend that the Board confirms the determination of the local authority in respect of the western portion of the site comprising the single storey structures fronting Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985), on the basis that this area is zoned for mixed uses, including residential use, and is vacant or idle.
- I recommend that the Board sets aside the determination of the local authority in respect of the commercial buildings and hardstanding areas in the central and eastern portions of the site (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990), on the basis that these areas are required for social, community and employment facilities and, therefore, meet the criteria for exclusion under Section 653B(iii)(I) of the Act.

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 Authority 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 Land at Anderson's Quay, Cork City, Cork (Parcel ID CCLA00042985, CCLA00042986, CCLA00042987, CCLA00042989, CCLA00042990) located on lands zoned for mixed use development, including residential use, and are, therefore, in scope of section 653B(a). The western portion of the site comprising the single storey structures fronting Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985), is boarded up and is in poor physical condition. On this basis, it is reasonable to consider that the western portion of the site is vacant and idle. The central and eastern portions of the site comprising the commercial

buildings and hardstanding areas (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990), are in use by a trade or profession but do not have the benefit of planning permission. In this regard, central and eastern portions of the site are considered vacant or idle. The site is currently connected to the public road network. Based on the urban character of the site, it is reasonable to consider that there is a public water network that the site can connect to. The UE capacity registers published June 2023, accessed 23 September 2024, indicate that there is capacity in the water and wastewater network to serve the site. No physical 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. Owing to their poor physical condition, it is reasonable to consider that the western portion of the site comprising the single storey structures fronting Clontarf Road (Parcel IDs CCLA00042986 and CCLA00042985), is not required for, or integral to, and social, community or government infrastructure or services. In this regard, the western portion of the site does not meet the criteria for exclusion under Section 653B(iii)(I). The central and eastern portion of the site is in better physical condition, and it is reasonable to consider that these areas are required by Meitheal Mara for their social, community and educational programmes. In this way, I consider that the central and eastern portion of the site comprising the commercial buildings and hardstanding areas (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990), meets the criteria for exclusion from the RZLT map under Section 653B(iii)(I). The preparation of a planning application for development at the site is not a criterion for exclusion from the RZLT map.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Cork City Council

Local Authority Reference Number: CRK-C272-RZLT2-8

Appeal by Hilltrent Ltd. care of Tom Phillips Associates 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 Cork City Council on the 27 day of June 2024 in respect of the site described below.

Lands at: Anderson's Quay, Cork City, Cork

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 in part and set aside the determination of the local authority in part and allow the appeal in part in relation to the lands identified as lands at Anderson's Quay, Cork City, Cork (Parcel ID CCLA00042985, CCLA00042986, CCLA00042987, CCLA00042989, CCLA00042990):

- The Board confirms the determination of the local authority in respect of the western portion of the site comprising the single storey structures fronting Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985) on the basis that this area is zoned for mixed uses, including residential use, and is vacant or idle.
- The Board sets aside the determination of the local authority in respect of the commercial buildings and hardstanding areas in the central and eastern portion of the site (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990) and on the basis that these areas are required for social, community and employment facilities and, therefore, meet the criteria for exclusion under Section 653B(iii)(I) of the Act.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority 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 Land at Anderson's Quay, Cork City, Cork (Parcel ID CCLA00042985, CCLA00042986, CCLA00042987, CCLA00042989, CCLA00042990) located on lands zoned for mixed use development, including residential use, and are, therefore, in scope of section 653B(a). The western portion of the site comprising the single storey structures fronting Clontarf Street (Parcel IDs CCLA00042986 and CCLA00042985), is boarded up and is in poor physical condition.

On this basis, it is reasonable to consider that the western portion of the site is vacant and idle. The central and eastern portions of the site comprising the commercial buildings and hardstanding areas (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990), are in use by a trade or profession but do not have the benefit of planning permission. In this regard, central and eastern portions of the site are considered vacant or idle. The site is currently connected to the public road network. Based on the urban character of the site, it is reasonable to consider that there is a public water network that the site can connect to. The UE capacity registers published June 2023, accessed 23 September 2024, indicate that there is capacity in the water and wastewater network to serve the site. No physical 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. Owing to their poor physical condition, it is reasonable to consider that the western portion of the site comprising the single storey structures fronting Clontarf Road (Parcel IDs CCLA00042986 and CCLA00042985), is not required for, or integral to, and social, community or government infrastructure or services. In this regard, the western portion of the site does not meet the criteria for exclusion under Section 653B(iii)(I). The central and eastern portion of the site is in better physical condition, and it is reasonable to consider that these areas are required by Meitheal Mara for their social, community and educational programmes. In this way, I consider that the central and eastern portion of the site comprising the commercial buildings and hardstanding areas (Parcel IDs CCLA00042989, CCLA00042987, CCLA00042990), meets the criteria for exclusion from the RZLT map under Section 653B(iii)(I). The preparation of a planning application for development at the site is not a criterion for exclusion from the RZLT map.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Sinéad O'Connor

Planning Inspector

Date: 01 October 2024