



An
Bord
Pleanála

Inspector's Report ABP-320443-24

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

Greenhills Industrial Estate, Greenhills Road, Dublin 12

Land Parcel ID

SDLA00053244

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD-C315-07

Appellant(s)

Tatver Properties Limited

Inspector

Paul O'Brien

1.0 Site Location and Description

- 1.1. The appeal lands, identified as Parcel ID SDLA00053244 on the RZLT Final Map, are located to the north west of St Bridget's Drive, to the rear/ south east of a Lidl supermarket on the Greenhills Road and to the south west of the Ballymount Industrial Estate. Access to the lands is possible from Tattoo Road to the Greenhills Road. The site is rectangular in shape, except where it adjoins a roundabout to its south and measures 0.52 hectares. The site is undeveloped, though prefabricated units are in situ.

2.0 Zoning and Other Provisions

- 2.1. The appeal site is zoned REGEN with an objective 'To facilitate enterprise and/or residential-led regeneration subject to a development framework or plan for the area incorporating phasing and infrastructure delivery.' Residential development is listed as Permitted in Principle. The zoning does not provide a primacy for enterprise over residential and does not equate to a mixed use.
- 2.2. CS5 Objective 5 states: 'To ensure that a section of any lands zoned EE or REGEN are set aside for local enterprise hubs for developing businesses or for shared workspaces serving people who are unable to work from home but who want to carry out their work close to where they live.'

3.0 Planning History

- ABP Ref. 316402-23 refers to an October 2023 decision to confirm the determination of the local authority for the inclusion of these lands on the RZLT Maps.
- PA Ref. S99A/0295 refers to a December 1999 decision to grant permission for the construction of an industrial building of 277 sq m.
- PA Ref. SD23A/0071 refers to a withdrawn application for a change of use from yard which is ancillary to an industrial storage building to recycling facility; provision of a recycling facility for the recycling of non-hazardous household and commercial waste; The development provides for the erection of a single storey

payment booth, internal one-way road providing access to the site from existing entrance off Greenhills Road, provision of hardstanding area for the storage of ro-ro bins and skips, provision of 30 car parking spaces including 18 spaces for vehicles and trailers; All landscaping, boundary treatments, drainage and associated site works.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map for the following reasons:

- The lands are in use for storage/ yard area for a larger area of land to the north of the subject site. The site is in use for pre-delivery inspection of prefabricated units and modifications etc. may be undertaken if necessary. The use is in accordance with permission on the larger area of land. A detailed list of planning permission references is provided in support of this.
- Access is only possible from the Greenhills Road and this road is proposed for upgrading under Bus Connects. Development would be premature pending the completion of the design of this route.
- The site is within the City Edge project lands and the lands are proposed for 'Natural Infrastructure' would prevent their development for residential use. Notes that no masterplan has been prepared to date.

5.0 Determination by the Local Authority

5.1. The Local Authority determined on the 26th of June 2024:

'To retain Land Parcel SDLA00053244 on the map.

It has been determined that Land Parcel SDLA00053244 fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021), and Amendments to the Taxes Consolidation Act 1997 as a consequence of the enactment of the Finance (No.2) Act 2023, for inclusion on the RZLT map for the following reasons:

The land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development.

The land is serviced, or it is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.

The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains.'

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The lands form part of the development approved under S99A/0295 and the use, modifying modular buildings, is in accordance with this permission.
- Accepts that the site is serviced but queries the fact that the final design of the Greenhills Road Core Bus Corridor has not been finalised, which may inhibit the development of this site.
- Refers to the City Edge project and the indicated use would not allow for residential development on this site.

Requests that the site be omitted from the Final Maps. Supporting documentation, photographs and plans have been provided in support of the appeal.

6.2. Planning Authority Response

No further comment made.

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 appeal lands are zoned for regeneration, allowing for residential development and therefore within scope of section 653B(a). The Planning Authority determined that the site remain on the RZLT map.
- 7.3. The current use does not prevent the development of this site for residential use. I note the details provided in the appeal, but no site plans or other details have been provided to demonstrate that the site is part of the lands where permission was granted under S99A/02895. Aerial photographs (Google Maps and Bing Maps) indicate that these lands were vacant and are only recently in use for the purposes indicated. These images also indicated that the lands to the north were fenced off from the subject site. The planning history provided does not adequately demonstrate a planning connection between approved development and the current use of these lands.

- 7.4. The second issue raised was access to the Greenhills Road. There is an existing access here via Tattoo Road and which also serves the industrial estate to the north and the Lidl to the west of the site. Considering the size of the site, the existing access should be adequate though this can be finalised through the Development Management Process. I note the South Dublin County Council report and which states that the site is suitably serviced.
- 7.5. The site is located within the City Edge project lands, however no draft plan or masterplan has been prepared to date and any uses indicated for this site would be indicative. Considering the character of the area, residential development would be acceptable here as it adjoins existing housing. The South Dublin County Development Plan is the relevant plan and which allows for residential development here.
- 7.6. I am of the view that the land satisfies criteria 653B (b) of the Taxes Consolidation Act 1997, as amended, and that it is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development. As such the lands have development potential.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I consider that the lands identified as Parcel ID SDLA00053244 on the RZLT Final Map meets 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 SDLA00053244 on the RZLT Final Map zoned REGEN – Regeneration Lands are considered to be within scope of Section 653B(a).

The appellant has not adequately demonstrated that the lands are necessary for a trade or business in operation in the area. 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 residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: South Dublin County Council

Local Authority Reference Number: SD-C315-07

Appeal by Tatver 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 South Dublin County Council on the 26th day of June 2024 in respect of the site described below.

Lands at: Greenhills Industrial Estate, Greenhills, Dublin 12.

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 SDLA00053244 on the final map.

Reasons and Considerations

The lands identified as Parcel ID SDLA00053244 are zoned 'REGEN' and are considered to be in scope of section 653B(a)(i). The lands are located within an established urban area. The lands are not necessary for the operation of a trade or business. 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 residential zoning objective that applies to these lands. The provision of roads would be addressed through the development management process.

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.

Paul O'Brien

Inspectorate

17th September 2024