



An
Bord
Pleanála

Inspector's Report ABP-320453-24

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

Opposite 32 Merlyn Park,
Sandymount, Dublin 4

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000196

Appellant(s)

Rebecca Kearney

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The lands comprise the northern tip of Land Parcel ID DCC000064027 on the final RZLT Map which accommodates a single storey garage structure located opposite No. 32 Merlyn Park in Dublin 4 which fronts on to the public road.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z2 – ‘Residential Neighbourhoods (Conservation Areas)’ in the Dublin City Development Plan 2022-2028 (Zoning map H refers). This zoning objective seeks ‘To protect and/or improve the amenities of residential conservation areas.’

3.0 Planning History

None.

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. The garage was previously part of the residential property at No. 32 Merlyn Park prior to its purchase by the appellant. The garage lacks independent utility connections and operates as a standalone unit with the sole purpose of vehicle storage. The land upon which the garage stands is currently occupied and due to its existing use, it cannot be developed unless it was demolished.

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 solely or primarily for residential use
- Have access, or can be connected to public infrastructure and facilities
- Satisfy the other relevant 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 in question is already developed and operates as a private garage.
- The existing development aligns with criteria set out in section 656J of the Planning and Development Act which specifies that land which is already developed and in active use should not be subject to RZLT.
- Criteria in section 653B are not applicable on the basis that the land is fully developed and operational and also that the property does not fall within the zoning categories that mandate its inclusion under section 653B.
- The property at 20 sqm in size falls short of the minimum standard for a single bedroom unit.

The appeal includes the following Appendices:

- A copy of the Local Authority's Determination
- A photograph of the garage

7.0 Assessment

- 7.1 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 residential (Z2) in the Dublin City Development Plan 2022-2028 and therefore within scope of section 653B(a). The Planning Authority determined that the site remain on the RZLT map.

7.2 Section 3.1.1 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) notes the following:

Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation).

The meaning of 'residential property' for the purposes of RZLT is taken from the Local Property Tax (LPT) definition of residential property (defined in section 2A of the Finance (LPT) Act 2012), as amended, which includes certain lands or buildings associated with the property that have a domestic or residential purpose.

"Residential property" as defined in section 2A of the Finance (Local Property Tax) Act 2012 as amended states the following:

(1) In this Act, "residential property" means any building which is in use as, or is suitable for use as, a dwelling.

(2) A shed, outhouse, garage or other building which is appurtenant to or usually enjoyed with a residential property shall be considered, for the purposes of this Act, to form part of the residential property.

(3) Subject to subsection (4), yards, gardens and other lands appurtenant to or usually enjoyed with a residential property as its garden or grounds shall be considered, for the purposes of this Act, to form part of the residential property.

(4) Where the total area of the yards, gardens and other lands, referred to in subsection (3), exceeds 0.4047 hectares, only those parts of such yards, gardens and other lands, which would be the most suitable for occupation and enjoyment with the dwelling, up to a total area (exclusive of the area, at ground level, of the building referred to in subsection (1)) of 0.4047 hectares, shall form part of the residential property.

While the garage structure previously formed part of the residential property at No. 32 Merlyn Park, this is no longer the case since being sold to the appellant. Therefore, the site containing the garage is considered to be a relevant site for the purposes of RZLT.

- 7.3 Section 653B(c)(i) of the Act provides an exemption for residential zoned land which is in use as a 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 must be subject to commercial rates. The garage is used to store a vehicle and it is not in use as a premises in which a trade or profession is being carried on, which provides services to residents of adjacent areas. Therefore, this exemption does not apply to the subject land.
- 7.4 Section 3.3.2 of the Guidelines confirms that An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only. While noting the ground of appeal that the land / property equates to 20 sqm, there is no minimum site size indicated in the legislation relating to RZLT which would preclude the inclusion of the site in the final map.
- 7.5 Having regard to the location of the land within an established residential area and fronting onto a public road, I am of the view that the land satisfies the qualifying criteria of 653B of the Taxes Consolidation Act 1997, as amended, on the basis that it is reasonable to consider that the land has access or can be connected to public infrastructure and facilities.

8.0 Recommendation

- 8.1 Having regard to the foregoing, I consider that the lands identified as part of Parcel ID DCC000064027 on the RZLT Final Map meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

The lands identified as part of Parcel ID DCC000064027 are zoned Z2 - Residential Neighbourhoods (Conservation Areas) and are considered to be in scope of section 653B(a). While the garage structure previously formed part of the residential property at No. 32 Merlyn Park, this is no longer the case since its sale, separate to that residential property. Therefore, the site containing the garage is considered to be a relevant site for the purposes of RZLT. The lands are located within an established urban area adjoining the public road. 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. There is no minimum site size provided in the Taxes Consolidation Act 1997, as amended, which would preclude the inclusion of the lands in the final map.

5.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000196

Appeal by Rebecca Kearney 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: Land opposite No. 32 Merlyn Park, Sandymount, Dublin 4

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 DCC000064027 on the final map.

Reasons and Considerations

The lands identified as part of Parcel ID DCC000064027 are zoned Z2 - Residential Neighbourhoods (Conservation Areas) and are considered to be in scope of section 653B(a). While the garage structure previously formed part of the residential property at No. 32 Merlyn Park, this is no longer the case since its sale, separate to that residential property. Therefore, the site containing the garage is considered to be a relevant site for the purposes of RZLT. The lands are located within an established urban area adjoining the public road. 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. There is no minimum site size provided in the Taxes Consolidation Act 1997, as amended, which would preclude the inclusion of the lands in the final map.

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

19th September 2024