



An
Bord
Pleanála

Inspector's Report ABP-320456-24

Type of Appeal

Appeal under section 653J of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map

Location

Unit 1, Zenith Building, Spindrift Avenue, Royal Canal Park, Dublin 15.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

RZLT-000198

Appellant(s)

Gemelli and Tavares Dental Clinic Ltd

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject site identified as RZLT-000198 and Parcel ID number DCC000064272 is located north of the Royal Canal and south and west of the Ratoath Road, in Pelletstown, Dublin 15. The lands comprise a vacant commercial ground floor unit within a four-storey mixed-use building with the upper floors being residential apartments located to the south of Spindrift Avenue at the junction with Hamilton Way.

2.0 Zoning and Other Provisions

- 2.1. The subject site is 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. The site is located within the boundary of the Ashtown-Pelletstown Local Area Plan (LAP) which was adopted on 2nd December 2013, was due to expire at the end of 2019 but has been extended until December 2023. Chapter 4 of the LAP sets out the Development Strategy for the area.

3.0 Planning History

The relevant planning history is considered to include the following:

PA reference number RZLT-000187, in 2023 Dublin City Council determined that the lands should be included within the RZLT map. ABP reference 317928-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified as land parcel ID number DCC000064272, under PA reference number RZLT-000187 on the RZLT map.

Lands including subject site

PA Ref. 3055/24 – In April 2024, Planning permission granted by DCC for a change of use from a retail unit to a dental clinic, internal alterations, signage and all ancillary site works and associated services at Retail Unit 1, Zenith Building, Block A, Spindrift Avenue, Royal Canal Park, Dublin 15.

PA Ref. 3069/14 – Permission granted for inter alia 152 no. houses, 91 apartments, supermarket with offices above, 4 no. retail units, café, landscaping, open space, associated works at Royal Canal Park, Ratoath Road, Pelletstown, Dublin 15.

4.0 Submission to the Local Authority

- 4.1. The appellants made a submission to the Local Authority seeking to have the lands excluded from the RZLT map on the basis that the property was recently been purchased by the appellants and subject to a change of use permission, granted by the Planning Authority on the 10th day of April 2024 from a retail use to use as a dental clinic. They state that the permitted dental practice would provide a service to local residents of the adjacent residential areas and, therefore, does not fall within the scope of Section 653B of the legislation.

5.0 Determination by the Local Authority

The local authority determined to include the site on the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria set out in in Section 653B of the Act.

The reasons set out by the Local Authority are as follows:

The lands:

- a) Are zoned solely or primarily for residential use.
- b) Have access to, or can be connected, to public infrastructure and facilities, with sufficient service capacity available for such development, as evidenced by the location of the lands within the footprint of the city and the development on the lands,
- c) Do not qualify for an exemption under Section 653B (c) (i) of the Taxes Consolidation Act 1997 as amended, as the lands are not in use as a premises in which a trade or profession is being carried on and which is liable to commercial rates and it is reasonable to consider the lands are not being used to provide services to residents of adjacent residential areas,
- d) Satisfy the other relevant criteria under section 653B of the Taxes Consolidation Act, as amended.

6.0 The Appeal

The appellants raised the following issues:

- The subject property has the benefit of a valid planning permission. This permission pertains to a change of use from a retail use to use as a dental clinic since April 2024. The commercial ground floor use was designed and built as a retail unit in response to a requirement of the Planning Authority to develop a mixed-use, high-density scheme.
- The subject lands are zoned solely or primarily for residential use. Permissible uses under the Z1 zoning objective include medical and related consultants,, residential and 'shop (local),'. Therefore, the use within the subject property does not constitute a non-conforming use.
- The site is within the boundary of the Ashtown – Pelletstown LAP. Chapter 4 of the LAP sets out the development strategy for the area. The Local Authority's policy is for the locality to be developed as a mixed-use area. The subject property is within a mixed-use building, as part of the aforementioned development strategy for the area.
- Although, the property is within a residential building, there are a number of commercial/retail units occupying the ground floor of several blocks throughout the neighbourhood.
- The appellants request that the property should be rezoned Z3-Neighbourhood centre, as it would be a more accurate description of the use.
- The properties in Ashington and Royal Canal Park are all new neighbourhoods established between the years 2013 and 2016. They are all connected to the public services, and any of the properties include within this neighbourhood are eligible are eligible to be within scope under Section 653B(b) of the Taxes Consolidation Act 1997, as amended.
- Based on a rezoning of the site to mixed use neighbourhood centre, it would be possible to seek at exemption under Section 653B(c) of the Taxes Consolidation Act 1997, as amended.

- They are currently awaiting fire safety and disability access certification in advancing of commencing the internal works associated with the permitted change of use to a dental clinic.
- The appellants state that they have a demonstrable need to function within the subject unit, a commercial space which would be used as a dental practice.

7.0 Local Authority Submission

The local authority made no comment in relation to this appeal.

8.0 Assessment

- 8.1. The comments raised in the appeal submission are noted. The site identified for inclusion on the RZLT map is zoned Z1 – ‘Sustainable Residential Neighbourhoods’ in the Dublin City Development Plan 2022-2028. This zoning objective seeks to protect, provide and improve residential amenities. The Planning Authority determined that the site remain on the RZLT map. The site is within a built-up area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 8.2. The appellant contends that the subject premises by reason of its permitted use, as a dental clinic, following a change of use application granted by DCC under planning reference number 3055/24 in April 2024, that the property is out of scope of the Taxes Consolidation Act 1997, as amended. I am of the opinion that the issues raised regarding the permitted use and the issue of rezoning of the lands to a Z3-mixed use neighbourhood use do not fall within the parameters of Section 653B (c) or any of the legislative provisions relating to the RZLT process and as such, cannot be considered in this appeal process. I consider that the site satisfies the criteria for inclusion on the final RZLT map set out in section 653B (c) of the Taxes Consolidation Act 1997, as amended.
- 8.3. The DCC report states that the subject unit was vacant on the date that the local authority made its determination on the 17th day of June 2024 and as such, it was not in use as a premises in which a trade or profession is being carried on and which is liable to commercial rates. Given that the unit was vacant, no commercial rates were being paid and no services were being provided to the adjoining residential areas, it

is, therefore, apparent that the site does not qualify for an exemption under section 653B (c) (i) of the Taxes Consolidation Act 1997, as amended.

- 8.4. I, therefore, consider that the site should remain for inclusion on the Residential Land Tax Maps as the site is suitably zoned for residential development 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.

9.0 **Recommendation**

- 9.1. I recommend that the board confirm the determination of the Local Authority and that the indicated site be retained on the map.

10.0 **Reasons and Considerations**

The lands identified as RZLT-000198 (Parcel ID number DCC000064272 located on Z1 Sustainable Residential Neighbourhoods zoned lands identified within the current Dublin City Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended. The lands are located within an established urban area with services available, and 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 Sustainable Residential Neighbourhoods zoning objective that applies to these lands.

11.0 **Recommended Draft Board Order**

Taxes Consolidation Act 1997 as amended.

Planning Authority: Dublin City Council

Local Authority Reference Number: RZ:LT-000198

Appeal Gemelli and Tavares Dental Clinic Ltd. 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: Unit 1, Zenith Building, Royal Canal Park, Ashtown, Dublin 15.

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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number DCC000064272 and Local Authority reference number RZLT-000198 should remain on the RZLT map.

Reasons and Considerations

The lands identified as RZLT-000198 (Parcel ID number DCC000064272 located on Z1 Sustainable Residential Neighbourhoods zoned lands identified within the current Dublin City Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997,. as amended. The lands are located within an established urban area with services available, and 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 Sustainable Residential Neighbourhoods zoning objective that applies to these lands.

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.

Fergal Ó Bric
Planning Inspectorate

9th day of September 2024