



An
Bord
Pleanála

Inspector's Report ABP-316299-23

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
Location	Brennanstown, Cabinteely, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	DM22/0004
Appellant(s)	Tudor Homes Limited
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The subject is made up of two portions of land located at Brennnastown, Cabinteely. The site in question is located to south of Cabinteely, north of Cherrywood Business Park and to the west of the N11. The lands in question are currently scrub lands

2.0 Zoning and Other Provisions

2.1. The site is located on with the Cherrywood Strategic Development Zone (SDZ). The Planning Scheme designates the lands for Residential Use under Map 2.1.

3.0 Planning History

3.1. DZ18A/0208: Permission granted for a development of 367 residential units, childcare facility and associated site works on a site with an area of 6.75 ha.

3.2. DZ19A0863: Permission granted for a development consistent of 342 residential units, childcare facility and associated site works on a site of 8.24 ha in area.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have its lands removed from the draft map on the basis that:

- Lands were subject to two permission that have been subject to judicial review and both were struck out.
- There is a lack of access to the lands in question with the next phase of the regional road to be delivered by the Council not commenced.
- As the landowners do not have access to the lands and the permission granted were subject to active judicial reviews at the time of determination they did not meet the criteria under S653B(b) .

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the site was in scope and should remain on the map. The land is suitably zoned for residential development, it is considered that the site can be fully serviced. The land is not constrained by its physical condition that would preclude the development of housing.
- 5.2. It is reasonable to consider that the lands may have access, or be connected to public infrastructure and facilities necessary for dwellings to be developed. The road connection is within the control of the applicant or relevant planning authority with no requirement for significant infrastructure to be delivered by an infrastructure provider. It is not a requirement of a given property to have a planning permission in place in order to be included on the map and the fact that permission was granted notwithstanding judicial review support the position that the land is serviceable and developable.

6.0 The Appeal

6.1. Grounds of Appeal

- The determination interpretation of the RZLT Guidelines is flawed and the lands cannot be considered in scope.
- The Local Authority evaluation refers to Section 4.1.1(ii) of the Guidelines and concludes on the basis that the land required for delivery of necessary road infrastructure are within the control of the Local Authority putting the land in scope which is a wrong interpretation.
- The appellants note that it is not reasonable to consider the lands may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, necessary for dwellings to be developed based on the requirement for the provision of a section of road and bridge crossing over Cabinteely Stream to provide access to the lands in question.
- The appellant refers to under Section 4.1.1(iii) in regards to land with a grant of permission that 'where planning permission have been granted subject to

requirements for significant infrastructure to be delivered by infrastructure providers, this land should not be considered 'In-scope'. In this regard the Council is the infrastructure provider for the necessary road infrastructure, the extant permissions granted are subject to phasing conditions including occupancy pending commencement and completion of Druids Glen Road P-Q3. In this case the lands should not be considered in-scope.

- The part of Druids Glen Road P-Q3 required to service the lands was not commenced or completed by the 1st October 2022 and as such the lands cannot be considered to have been 'able to connect'. The lands do not come within scope under Section 653B(b).

7.0 **Assessment**

- 7.1. The appeal concerns the failure of the lands in question to come under the scope of section 653B(b) under which...

It is reasonable to consider 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 service capacity available for such development.

- 7.2. The lands in question are part of the Cherrywood SDZ and the planning scheme indicates that the Druids Glen Road P-Q3 must be commenced prior to the occupation of 40% of DA5 (growth area) and completed to a standard to be taken in charge prior to the occupation of 65% of DA5. Both portions of the lands have been subject to a grant of permission for housing that has subsequently been quashed by way of judicial review. The subject lands require provision of a road section and bridge crossing (Cabinteely Stream) to connect to constructed parts of the Druids Glen P-Q3 road that provides access to the N11.

- 7.3. The Council determination was on the basis that the infrastructure to connect the lands to existing road infrastructure is under Local Authority control. And refer to

Section 4.1.1(iii) of the RZLT guidelines. The appellant disagrees with the Council interpretation of this section noting that the lands do not meet the criteria under Section 653B(b).

7.4. Section 4.1.1(iii) of the RZLT Guidelines relates to 'Services to be considered'. Under this section it is stated that...

"This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in-scope.

In this case the lands require construction of a section of road including a bridge crossing over Cabinteely Stream to connect to existing road infrastructure to the west. In this case the road infrastructure is not in place to connect or be able to connect to existing road infrastructure to west. Under Section 4.1.1(ii) it is stated that ...

"Where the infrastructure does not meet the threshold above, the following needs to be considered:

- Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope?
- Do the connections to services involve minor works, in which case the land may be in-scope?
- Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope?

7.5. In this case the works to connect the landbank to services in the form of the existing road infrastructure is on public land under the control of local authority with it reasonable to conclude they may be in-scope.

7.6. Under Section 4.1.1(iii) it is stated that...

“In appraising whether suitably zoned lands are connected, or able to be connected to services this assessment must consider the following infrastructure categories:

Road access

In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority.

Where provision has been made, but not yet constructed for road and pathway access through Local Authority consenting processes, then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.

At the current time this project identified as N11 Druid's Glen Road (P* to P3) Phase 2 is at tender stage (Council's Capital Programme). I do not know at what date this process commenced however would note that the assessment report at the time of determination indicates this project is out to tender and due to commence construction imminently.

I would consider that based on the provision of Section 653B(b) and the recommendation of the RZLT guidelines under section 4.1.1(iii), that it is reasonable to consider the lands in question 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. The works required to connect the landbank to existing road infrastructure and the N11 is on land under control of the Local Authority and the process of tendering for construction of the permitted road or pathways has commenced.

- 7.7. I therefore consider that the site should remain on the map in accordance with the recommendation of the Planning Authority.

8.0 Recommendation

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

9.0 Reasons and Considerations

The appellant requested that their site be removed from the map due to its failure to qualify under Section 653B(b). Having regard to the fact that road works required to facilitate access to the existing road network are on land under Local Authority control and the process of tendering for construction of the permitted road or pathways has commenced, the lands in question satisfy the criterion for inclusion on the map set out in section 653B(b) 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.

Colin McBride
Senior Planning Inspector

05th September 2023