



An
Bord
Pleanála

Inspector's Report

ABP-316315-23

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 Map

Location

Lands located in Newcastle (forming part 3 of Graydon Development), Co. Dublin.

Local Authority

South Dublin County Council

Local Authority Reg. Ref.

SD-C259-05

Appellant(s)

Cairn Homes Properties Limited

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the southern side of the R120 Regional Road, within 350 metres to the east/ south-east of the centre of Newcastle. The site has a stated area of 1.52 hectares and is surrounded to the east, west and south by established residential development.
- 1.2. It should be noted that there is 1 no. separate concurrent RZLT Appeal pertaining to 1 no. site within proximity to the subject site, as follows:
 - Local Authority Ref. SD-C259-04 and An Bord Pleanála Case Ref. No. VY06S.316321, relating to lands located c. 262 metres further to the west of the subject site.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned Objective 'RES-N' in the South County Dublin Development Plan, 2022 to 2028. The relevant zoning objective is '*to provide for new residential communities in accordance with approved area plans*'. Residential development is permitted in principle on lands zoned RES-N.
- 2.2. The subject site and surrounding lands are also ascribed the following specific local objective:
 - '*CS9 SLO4: To commit to only facilitate the delivery of Phase 2 residential lands once identified infrastructure comprising of the Urban Park/Square c. 1ha in size, the additional 1.4ha for Taobh Chnoic Park and the East/West Link Street required within Phase 1 have been delivered to the satisfaction of the Planning Authority.*'
- 2.3. The site is located within a Site and Monuments Record Zone of Notification (R149425) as per Map no. 7 of the South Dublin County Development Plan, 2022 to 2028. It is noted that there is a Recorded Monument (DU021-095----) located within c. 173 metres to the south-west of the western site boundary.
- 2.4. The site is also located within an Area of Archaeological potential as per Map no. 7 of the South Dublin County Development Plan, 2016 to 2022.

3.0 Planning History

3.1. Planning History for the subject site

3.2. SD23A/0043: Applicant: Cairn Homes Property Limited. Permission for Demolition of the existing dwelling and associated structures and the construction of a residential development of 39 dwellings comprising of 15 two storey houses and 24 duplex apartment/apartments in 2 three storey buildings and all associated site works. Permission was GRANTED on 10/08/2023 subject to 28 no. conditions. Condition no. 25 relates to Pre-Commencement Archaeological Testing and reads as follows:

'25. Archaeology.

- a. Prior to the commencement of development:*
 - 1. The applicant shall engage the services of a suitably qualified Archaeologist to carry out the Archaeological Impact Assessment (AIA) which should include a programme of Archaeological Test Excavation to respond to this request for Further Information. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her express consent.*
 - 2. The archaeologist shall inspect the proposed development site (PDS) and detail the historical and archaeological background of the site (consulting appropriate documentary sources) and review all cartographic sources and aerial photographs for the area.*
 - 3. The Archaeological Test Excavation shall be carried out under licence from the Department of Housing, Local government and Heritage and in accordance with an approved method statement; note a period of 5-6 weeks should be allowed to facilitate processing and approval of the licence application and method statement.*
 - 4. Test trenches shall be excavated at locations chosen by the archaeologist, having consulted the site drawings. Excavation is to take place to the uppermost archaeological horizons only, where they survive. Where archaeological material is shown to be present, the*

archaeologist shall stop works pending further advice from the Department of Housing, Local Government and Heritage. Please note that all features/archaeological surfaces within the test trenches are to be hand-cleaned and clearly visible for photographic purposes.

5. *Having completed the work, the archaeologist shall submit a written report to the Department of Housing, Local government and Heritage and the Local Authority describing the findings of the AIA and the results of the Archaeological Test Excavation. The report shall comment on the degree to which the extent, location and levels of all proposed foundations, service trenches and other sub-surface works required for the development will affect the archaeological remains. This should be illustrated with appropriate plans, sections, etc.*
6. *Where archaeological material is shown to be present, further mitigation measures will be required; these may include refusal, redesign to allow for preservation in situ, excavation and/or monitoring as deemed appropriate. The Department of Housing, Local government and Heritage will advise the Local Authority with regard to these matters. No decision should be made on this application until the Department of Housing, Local government and Heritage and the Local Authority have had the opportunity to fully evaluate the findings of the AIA.*
 - b. *Where the Department request further details or amendments as a result of the information submitted in respect of (a) above, the applicant shall submit these details for the written approval of the Planning Authority, prior to the commencement of development.*

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.'

- 3.3. SD20A/0186: Applicant: Cairn Homes Property Limited. Permission for option of the inclusion of an ancillary single storey garden room structure (c.12.5sq.m) in gardens of permitted dwellings under planning Reg. Ref. ABP-305343-19. Permission was GRANTED on 28/10/2020 subject to 7 no. conditions. This application site overlaps part of the subject site.

- 3.4. ABP-305343-19: Strategic Housing Development Application. Applicant: Cairn Homes Properties Limited. Permission for the demolition of 5 no. structures, construction of 406 no. residential units (281 no. houses, 125 no. apartments) creche and associated site works. Permission was GRANTED on 23/12/2019 subject to 31 no. conditions. Condition no. 20 relates to Archaeological Monitoring and recording. This site overlaps part of the subject site.
- 3.5. SD10A/0146: Applicant: Paddy & Mary O'Callaghan. Outline Planning Permission for 5 no. detached bungalows. Outline Planning Permission was REFUSED on 14/07/2010 for 5 no. reasons.
- 3.6. SD08A/0350: Applicant: Tenbury Developments Limited. Permission for 48 residential units. Permission was GRANTED on 11/11/2008 subject to 27 no. conditions. Condition no. 7 relates to Archaeological monitoring.
- 3.7. SD05A/0344 (ABP Appeal Ref. no. PL06S.217096): Applicant: Tenbury Developments Ltd. Permission for 743 no. dwellings including a neighbourhood-centre. Permission was GRANTED on 14/08/2006 subject to 44 no. conditions.
- 3.8. Other Relevant Planning History
- 3.9. ABP-313814-22. Strategic Housing Development. Applicant: Cairn Homes Properties Limited. Permission for 280 no. residential units (128 no. houses, 152 no. apartments), creche and associated site works. The Case was due to be decided by 05/10/2022 and is therefore now overdue. This site is located c. 290 metres further to the west from the subject site.
- 3.10. SD22A/0459 (Appeal Ref. No. PL06S.316066): Applicant: Cairn Homes Properties Limited. Permission for the construction of a two storey creche / childcare facility. A notification of decision to Grant permission was issued on 16/02/2023. This decision is the subject of a current appeal which was due for decision by 18/07/2023 and is therefore now overdue. This site is located to the immediate south of the subject site.
- 3.11. SD21A/0247: Applicant: Cairn Homes Property Limited. Permission for the Demolition of existing derelict dwelling and the construction of a replacement. Permission was GRANTED on 28/01/2022 subject to 18 no. conditions. Condition no. 3 relates to Archaeological Monitoring, Recording and Reporting. This site is located to the immediate north of the subject site.

- 3.12. SD19A/0129: Applicant: Cairn Homes Properties Limited. Demolition of derelict dwelling on site and the construction of a replacement two storey, five bedroom detached dwelling house (215.2 sqm) together with all associated landscape, boundary, site and development works. Permission was GRANTED on 19/07/2019 subject to 19 no. conditions. Condition no. 3 relates to Archaeological Monitoring. This site is located to the immediate north of the subject site.
- 3.13. SD07A/0163: Applicant: Stephen Flattery. Permission for two storey detached house. Permission was GRANTED on 5/06/2007 subject to 9 no. conditions. This site is located to the immediate north of the subject site.

4.0 Submission to the Local Authority

- 4.1. The Appellant made a submission to the Local Authority seeking to have their land removed from the draft map.
- 4.2. The lands are located within a zone of Archaeological Potential and should be removed until the definitive impacts on proposed development site are known.
- 4.3. Part of the subject lands are required for open space/ recreational infrastructure.

5.0 Determination by the Local Authority

- 5.1. Local Authority Decision: To amend Land Parcel SDLA00026767 on the map.
- 5.2. It has been determined that Land Parcel SDLA00026767 as amended, as shown in Figure B, fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Section 28 Ministerial guidelines 'Residential Zoned Land Tax - Guidelines for Planning Authorities' for inclusion on the RZLT map published on 01 December 2023.
- 5.3. The Local Authority determined that the site, as amended and shown in figure B of the Determination, was in scope and should remain on the map.

6.0 The Appeal

6.1 Grounds of Appeal

- 6.2. The Grounds of Appeal are summarised as follows:

- The lands should be omitted from the RZLT maps given the presence of significant known archaeological remains on site.
- The lands should be omitted from the RZLT maps given a portion of the land are required for recreational infrastructure.
- The application of the RZLT should be taken as a minimum of 3 years from the date of a final grant of permission.

7.0 Assessment

- 7.1. The comments raised in the appeal are noted.
- 7.2. It should be noted that the Local Authority, as part of its assessment and determination, amended Land Parcel SDLA00026767 as per Figure B of the Determination Letter dated 29th March 2023.
- 7.3. The site, which is subject to this appeal, as outlined in red in figure 5.1, includes lands which, as per the determination of the Local Authority, have already been deemed to be out of scope. The assessment of this appeal is therefore focused on the amended Land Parcel SDLA00026767 as per Figure B of the Determination Letter dated 29th March 2023.
- 7.4. The serviced nature of the lands is not disputed.
- 7.5. It is noted that planning permission was recently granted for residential development on the subject site, as planning reg. ref. no. SD23A/0043 refers. The permitted site layout shows residential development on the area of the site which is the subject of the Local Authority determination. Condition no. 25 of this said permission relates to Archaeological Testing, as quoted above in Section 3.0 of this Report.
- 7.6. Having regard to Section 3.1.2 (Exclusions from the Map/ Significant Archaeology) of the Residential Zoned Land Tax Guidelines for Planning Authorities, the following appraisal is presented:
- The site is located within a zone of archaeological notification for (R149425) as per Map no. 7 of the South Dublin County Development Plan, 2022 to 2028. It is noted that there is a Recorded Monument (DU021-095----) located within c. 173 metres to the south-west of the western site boundary.

- The site forms part of a larger consented site, as planning reg. ref. no. SD23A/0043 and SD08A/0350 refer. Condition no. 25 of planning reg. ref. no. SD23A/0043 is informed by a submission received from the Department of Housing, Local Government and Heritage dated 5/04/2023. This said submission is in turn informed by an Archaeological Assessment Report lodged with the said planning application.
- The majority of the subject Land Parcel SDAL00026767, as amended, is undeveloped greenfield with the balance, focused to the north of the Land Parcel, indicating characteristics of brownfield development.

7.7. Therefore, having regard to the provisions of Section 653 B c) of the Act, the area of the site (Land Parcel ID SDLA00026767, as amended), which is greenfield/undeveloped land, should be excluded from the map. It is noted that the full archaeological extent of the subject site is, as of yet, unknown and will, if the site is to be developed in accordance with the permitted development on site, planning reg. ref. no. SD23A/0043, be the subject of further archaeological test excavations in accordance with the terms of Condition no. 25.

7.8. The balance of the lands, which are brownfield in nature and have been the subject of previous development should be included on the map.

8.0 Conclusion

8.1. The subject site, as Land Parcel ID SDLA00026767, as amended, refers, is located within the zone of notification for the following archaeological monument that is listed in the Record of Monuments and Places (RMP): DU020-003008- Settlement deserted - medieval.

8.2. The majority of the site (Land Parcel ID SDAL00026767, as amended) is greenfield/undeveloped lands and this should be excluded from the map as they do not satisfy the criterion for inclusion on the map set out in Section 653B(c) of the Taxes Consolidation Act 1997, as amended.

8.3. The balance of the lands, which are brownfield in nature and have been the subject of previous development, satisfy the criterion for inclusion on the map set out in Section 653B(c) of the Taxes Consolidation Act 1997, as amended.

9.0 Recommendation

9.1. I recommend that the Board set aside the determination of the Local Authority in respect of the greenfield/ undeveloped parts of the lands pertaining to Land Parcel ID:

- Land Parcel ID SDAL00026767, as amended.

9.2. I recommend that the Board confirm the determination of the Local Authority in respect of the brownfield/ developed parts of the lands pertaining to Land Parcel ID:

- Land Parcel ID SDAL00026767, as amended.

10.0 Reasons and Considerations

10.1. The portion lands identified as SD-C259-05 (Land Parcel ID SDLA00026767, as amended) which are greenfield/ undeveloped lands do not fall within the scope of Section 653B c) of the Act and should therefore be excluded from the map.

10.2. The remainder of the lands identified as SD-C259-05 (Land Parcel ID SDLA00026767, as amended) which are brownfield/ developed lands meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion from the map.

10.3. 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.

Frank O'Donnell

Planning Inspector
31st August 2023