



An
Bord
Pleanála

Inspector's Report

ABP-316321-23

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 at Newcastle South, Phase 2, Newcastle, County Dublin.

Local Authority

South Dublin County Council

Local Authority Reg. Ref.

SD-C259-04

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 (Main Street), close to the centre of Newcastle. The site is predominantly greenfield and includes an access road which serves an existing construction compound in the south-east corner. The site has a stated area of 8.82 hectares.
- 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-C259-05 and An Bord Pleanála Case Ref. No. VY06S.316315, relating to lands located c. 262 metres further to the east of the subject site.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned '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. There is an indicative road upgrade route shown within the subject site. The following text applies to the said indicative road link:

Name: Newcastle Street Network

Description: Various streets within the Newcastle LAP lands.

Function: Formation of a strategic street network providing access throughout the LAP lands.

- 2.3. The subject site and surrounding lands are also ascribed the following specific local objective:

- *'CS9 SLO3: A sequentially phased programme to be submitted alongside any planning application on the subject lands which provides for the delivery of the following in tandem with development or as described 1) No more than 200 units to be permitted before the commencement of the remaining lands of c. 1.4ha to provide for the full Taobh Chnoic Park to the south 2) Urban*

Park/Square c. 1ha in size (Burgage South Park) to the satisfaction of the planning authority, 3) East-West Link Street, 4) Sean Feirm Park c. 0.2ha in size, 5) a portion of Tower House Park c. 0.1ha. All applications shall demonstrate to the satisfaction of the Planning Authority how they are supporting the delivery of North South Street connections to the Main Street.

- *With regards delivery of a new primary school at Taobh Chnoic, the timing of this will be subject to educational needs in consultation with the Department of Education. Prior to completion of 200 units confirmation to be provided from the Department of Education on the transfer of lands to provide for the school, subject to their confirmation of need.'*

2.4. 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.

2.5. The site is located within the Architectural Conservation Area (ACA) for Newcastle (Ref. ACA002).

3.0 Planning History

3.1. Planning History for the subject site

3.2. 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.

3.3. SD23A/0136: Cairn Homes Properties Limited. Permission for the Construction of 48 dwellings. A request for FURTHER INFORMATION was issued on 3/08/2023 on 6 no. main points relating to road layout and car parking provision, drainage and water services infrastructure/ design, landscaping plan/ full works specification, detailed open space design/ layout, Green space factor score sheet.

3.4. SD05A/0344/EP: Grant Thornton. EXTENSION OF DURATION (EOD) application. EOD GRANTED on 10/09/2014.

3.5. SD05A/0344 (ABP Appeal Ref. No. PL06S.217096): Tenbury Developments Limited. Permission for 743 no. units, neighbourhood centre, landscaping, roads infrastructure,

parking, provision of traveller accommodation site. Permission was GRANTED on 23/08/2002.

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 main issues raised in the submission are discussed below.
- 4.3. Point no. 1: Archaeology: The northern two thirds of the main development area are located within the zone of archaeological potential associated with the medieval settlement of Newcastle (RMP DU020-003008). A further 10 archaeological sites are located within 500m within the townlands of Newcastle South, Newcastle North, Newcastle Farm, Glebe and Grange. The closest of these consists of a tower house (DU020-003007), located c. 22 m to the southwest of the development area.
- 4.4. The Appellant states that having regard to the potential archaeological constraints on the subject lands it is respectfully requested that the subject site (or part thereof) is excluded from the RZLT mapping until the definitive impacts on the proposed development of the site are understood., which will only become evident pursuant to the issuing of a final grant of permission and subsequent site excavations.
- 4.5. Point no. 2: Transport Infrastructure: The Appellant refers to Table 7.5 of the South County Dublin Development Plan, 2022 to 2028 which relates to the Newcastle Street Network. The relevant text for same is quoted above in Section 2.0 of this Report.
- 4.6. The Appellant states that the subject lands are considered essential for the implementation of new transport infrastructure having regard to the six-year road objective. The Appellant contends that on this basis the lands should not be included on the RZLT Map in accordance with Section 653B(iii)(II). The Appellant respectfully requests that the lands be omitted from the RZLT map as it is required for and is integral to occupation by transport facilities and infrastructure.
- 4.7. Reference is made to Section 653C as to what should be included on the draft map. The Appellant refers to Section 653B (1) (b) (i) and the date of 1st January 2022. The Appellant states that the DRAFT Maps do not specify the date and that therefore it can be taken that the relevant date is the 1st January 2022. The Appellant then states that

consequently, the effective date for the application of the RZLT should be taken as a minimum 3 years from the date of a final grant of permission.

5.0 Determination by the Local Authority

- 5.1. Local Authority Decision: To include Land Parcel SDLA00111562 on the map.
- 5.2. It has been determined that Land Parcel SDLA00111562 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 for the following reasons:

1. *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.*
2. *The land is serviced, or it is reasonable to consider may have access to services. Services 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.*
3. *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.*

- 5.3. The Local Authority determined that the site 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:

- Item No. 1: The lands should be omitted from the RZLT maps given the presence of significant known archaeological remains on site.

- The Appellant references the Section 28 Guidelines ‘Residential Zone Land Tax – Guidelines for Planning Authorities’ published in June 2022 and, in particular, reasons why zoned and serviced lands could be excluded from the map. The reasons include land which has significant archaeological remains...
- The Appellant refers to previous Archaeological Testing and the findings of same at the site which was carried out in November 2021 under license.
- The Appellant states that having regard to the potential archaeological constraints on the subject lands it is respectfully requested that the subject site (or part thereof) is excluded from the RZLT mapping until the definitive impacts on the proposed development of the site are understood. The Appellant states that this will only become evident pursuant to the issuing of the final grant of permission and subsequent site excavations.
- Item No. 2: The lands should be omitted from the RZLT maps given a portion of the land are required for and are integral to the provision of future transport and infrastructure.
 - The Appellant refers to Section 653B of the Finance Act which identifies particular criteria where land should not be included on the map. This includes ‘*Transport facilities and infrastructure,*’
 - The Appellant quotes an extract from the Six Year Programme which relates to the ‘*Newcastle Street Network,*’ i.e. ‘*various streets within the Newcastle LAP lands*’ and ‘*formation of a strategic street network providing access throughout the LAP lands.*’
 - The Appellant contends that these lands are considered essential for the implementation of new transport infrastructure having regard to the six-year road objective set out in the South Dublin County Development Plan 2022 to 2028 and on this basis should not be included on the RZLT map in accordance with Section 653B (iii) (II).

- Item no. 3: The application of the RZLT should be taken as a minimum of 3 years from the date of a final grant of permission.
 - Section 653C specifies what should be contained on the draft map. Section 653B (1) (b) (i) indicates the date on which, based on the information available to it, it considers that land first satisfied the relevant criteria where the date is after 1st January 2022. The draft maps do not specify the date, so it can be taken that the relevant date is the 1st January 2022.
 - The Appellant contends that it is clear from the preceding section that there were potential impediments to development on the lands as of the 1st January 2022.
 - The Appellant contends that consequently, the effective date for the application of the RZLT should be taken as a minimum 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. The Appeal submission has 3 no. similar yet differing sites identified/ outlined in red, see Figures 2.1, 4.1 & 5.1. The Grounds of Appeal set out in Section 5.0 refer to figure 5.1. For the purposes of this Appeal, the site which is subject to the appeal is taken to be that shown in Figure 2.1 – Subject lands. This site, as defined in red in Figure 5.1, is taken to be the site which is subject to this Appeal. This said site, for the most part, is consistent with the site indicated in the Local Authority determination, Land Parcel ID: SDAL00111562.
- 7.3. The serviced nature of the lands is not disputed.
- 7.4. 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 majority of 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.

- The site for the most part is the subject of a current Strategic Housing Development planning application, reg. ref. no. ABP-313814-22. The said Application is accompanied by an Environmental Impact Assessment Report (EIAR). Chapter 13 of the said EIAR relates to Cultural Heritage (Archaeology). The Archaeological Assessment included Archaeological test trenching based on a geophysical survey. A total of 4 no. Archaeological Areas have been identified within the proposed development area and these are listed as AA1, AA2, AA3 & AA4.
- The findings of the Archaeological Assessment do not, in my opinion, indicate significant archaeological remains. Archaeological mitigation measures are proposed which do not include preservation in situ but instead propose archaeological preservation by record (prior to the commencement of construction).
- Having regard to the above, I am satisfied that the site should remain in scope as per the provisions of Section 653B c).

7.5. Regarding the Indicative Road Upgrade Route relating to the lands, as quoted above in Section 2.2 of this Report, such a Road Upgrade, as proposed in the current live Strategic Housing Development Application, Reg. ref. no. ABP-313814-22, will not only serve to open up adjoining lands but is also essential for the orderly development of the subject lands. I am satisfied therefore that the that the subject lands should remain in scope and should not be excluded from the map on this basis.

8.0 Conclusion

8.1. The site is 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 for residential purposes. The site does 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 confirm the determination of the Local Authority and that the indicated site be retained on the map.

10.0 Reasons and Considerations

- 10.1. The lands identified as SD-C259-04 (Land Parcel ID: SDLA 00111562), meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters raised in the Grounds of Appeal that warrant exclusion from the map.
- 10.2. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 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