



An
Bord
Pleanála

Inspector's Report ABP-316342-23

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| 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 | “Mount St. Mary’s, Dundrum Road, Dublin 14. |
| Planning Authority | Dun Laoghaire Rathdown County Council |
| Planning Authority Reg. Ref. | DM22/0027 |
| Appellant(s) | Winterbrook Homes |
| Inspector | Colin McBride |

1.0 Site Location and Description

- 1.1. The subject site consists of 1.6 hectares is located on the eastern side of Dundrum Road and located to the south of Milltown. The lands are associated with a former seminary use.

2.0 Zoning and Other Provisions

- 2.1. The site is located on lands zoned Objective A – To provide residential development and improve residential amenity while protecting the existing residential amenities under the Dun Laoghaire Rathdown County Development Plan 2022 – 2028.

- 2.2. 'INST' designation.

Where institutional lands – identified by an 'INST' objective on Development Plan Maps – are proposed to be developed:

- A minimum of 25% of the entire INST land parcel, as determined by the Planning Authority, will be required to be retained as accessible public open space. In determining the area to which the "INST" objective applies the planning authority shall have regard to the existing and historical land use and associations between land uses, and the extent to which any lands contribute to the open character and setting of the core institutional function.
- This provision must be sufficient to maintain the open character of the site with development proposals structured around existing features and layout, particularly by reference to retention of trees, boundary walls and other features as considered necessary by the Council (refer also to Section 12.3.7.10).
- The provision must be sufficient to maintain and/or improve the recreational value of the site particularly with regard to adding to the sustainable neighbourhood infrastructure of the area.

- Any proposal for development other than that directly related to an existing social infrastructure and/or institutional uses, will require the preparation and submission of a masterplan.
- Average net densities should be in the region of 35 - 50 units p/ha. In certain instances, higher densities may be permitted where it can be demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.

3.0 Planning History

- 3.1. ABP-310138-21: Permission granted for demolition of existing buildings on site and part of the granite wall along Dundrum Road, excluding Small Hall, construction of 231 no. apartments, childcare facility and associated site works. Subject to a current Judicial Review.
- 3.2. D16A/013: permission granted for works to existing stone boundary wall along Dundrum Road.

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:
 - Unjust that landowner would be subject to tax given the active attempts to develop the site that are being hindered by the judicial review process.
 - The landowners are seeking removal of 'INST' designation of the site.
 - Given the 'INST' designation the landowners requested that a 75% liability be given that 25% open space is a requirement of the INST designation and such is supported by the provisions of 635B(c)(iv), where lands should be considered exempt where a statutory designation precludes development.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the land was in scope and should remain on the map. The land is suitably zoned for residential development and it was considered that the site does have reasonable access to services. It was concluded that the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude provision of dwellings.

6.0 The Appeal

6.1. Grounds of Appeal

- It is considered unjust that landowner would be subject to tax given the active attempts to develop the site that are being hindered by the judicial review process.
- The landowners requested that the Council remove the 'INST' designation of the site on the basis that it is no longer an institutional site
- Given the 'INST' designation the landowners requested that a 75% liability be given that 25% open space is a requirement of the INST designation and such is supported by the provisions of 635B(c)(iv), where lands should be considered exempt where a statutory designation precludes development.
- The appellants are trying to challenge inclusion of lands on the RZLT maps on which the landowners are actively trying to develop the land and state that inclusion of such will ultimately increase development costs and reduce future affordability which is a counter-intuitive action.

7.0 Assessment

7.1. The appeal grounds relate to inclusion on the map on the basis that the landowners are actively attempting to develop the lands but have been hindered by the judicial review process with inclusion on the RZLT map unjust in such circumstances. The other grounds for appeal relates to a map objective designation of the lands as 'INST' with the appellants requesting that a 75% liability be given to these lands due to the requirement under this designation of 25% of the site area for open space and

that such is statutory designation that precludes development and is covered by provisions of 635B(c)(iv).

7.2. In relation to the appellants' argument regarding development being held up by the judicial review process, there is no criteria under Section 635B that exempts any lands on this basis (length of times it takes to get planning permission). I would also point out that the very fact of achieving a planning permission on a site, does not guarantee that such lands will be developed or activated for development.

7.3. As noted above and in the determination the lands in question are in their entirety suitably zoned for residential development. The 'INST' designation attached to the lands does impact on how the lands are developed with the following requirements under Development plan policy...

Where institutional lands – identified by an 'INST' objective on Development Plan Maps – are proposed to be developed:

- A minimum of 25% of the entire INST land parcel, as determined by the Planning Authority, will be required to be retained as accessible public open space. In determining the area to which the "INST" objective applies the planning authority shall have regard to the existing and historical land use and associations between land uses, and the extent to which any lands contribute to the open character and setting of the core institutional function.
- This provision must be sufficient to maintain the open character of the site with development proposals structured around existing features and layout, particularly by reference to retention of trees, boundary walls and other features as considered necessary by the Council (refer also to Section 12.3.7.10).
- The provision must be sufficient to maintain and/or improve the recreational value of the site particularly with regard to adding to the sustainable neighbourhood infrastructure of the area.

- Any proposal for development other than that directly related to an existing social infrastructure and/or institutional uses, will require the preparation and submission of a masterplan.
- Average net densities should be in the region of 35 - 50 units p/ha. In certain instances, higher densities may be permitted where it can be demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.

Section 635B(c)(iv) is in relation land “that is subject to a statutory designation that may preclude development”.

In this regard the ‘INST’ designation does not preclude development of the lands in question, it does place restrictions in the manner in which it is developed and requires a certain level of open space to be provided as part of a proposal. I would not consider that this is statutory designation that may preclude development and would consider that the entirety of lands in question are in scope for inclusion on the map.

- 7.4. Having regard to the above, and as stated earlier in this section I am of the view that the lands are suitably zoned for residential development with no statutory designations which may preclude development, 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

- 9.1. The appellants requested that their site be removed from the map due to the unjust scenario where the landowners’ active attempts at developing the site have been

hindered by a judicial review and that some level of reduced liability is merited due to the 'INST' designation applied under Development Plan policy. There are no criteria under Section 635B under which the length of time it takes to achieve planning permission under either the planning process or as a result of Judicial Review would exempt land from inclusion. The site is suitably zoned for residential use and the 'INST' designation does not constitute a statutory designation that may preclude development of the lands in question.

- 9.2. The subject lands satisfy the criterion for inclusion on the map set out in section 653B(c) 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

04th August 2023