



An
Bord
Pleanála

Inspector's Report ABP-316345-23

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	Former Blakes and Esmonde Motors site, Stillorgan, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	DM22/0020
Appellant(s)	Cairn Homes Properties Ltd
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The subject site consists of 1.19 hectares and is located at the junction of the N11 and the Lower Kilmacud Road. The site is currently a vacant development site.

2.0 Zoning and Other Provisions

- 2.1. The site is located on lands zoned Objective DC – ‘To protect, provide for and/or improve mixed use district centre facilities’ under the Dun Laoghaire Rathdown County Development Plan 2022 – 2028.
- 2.2. The site is located within the lands subject to the Stillorgan Local Area Plan 2018-2024.

3.0 Planning History

- 3.1. ABP-313266-22: Permission sought for 377 no. Build to Rent apartments, crèche and associated site works. Currently pending decision.
- 3.2. ABP30052017/E: Application for extension of duration of permission. Subject to a further information request.
- 3.3. ABP-300520-17: Permission granted for a mixed use development comprising of 179 no. student accommodation units (576 no. bed spaces), 103 no. residential apartment units, retail unit, community sports hall and all associated site works.

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:

- The site should be excluded on the basis of Section 625(c)(i) and (c)(ii) due to risk of contamination with soil investigations undertaken on site. The inclusion of the lands should be deferred until a grant of permission.
- The site is subject to a current SHD application that has yet to be decided and the risk of litigation means delays outside of the applicants control on delivery of housing. The application of RZLT should only become applicable when a final grant of permission is secured.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that contamination is not significant enough to preclude residential development for the time being. The site is suitably zoned for mixed use development including residential uses 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

- The land should not be included on the RZLT map on the basis that the land is in need of specific remediation for contamination with such being a reason for exclusion as outlined under the Section 28 Guidelines, Residential Zoned Land Tax-Guidelines for Planning Authorities (June 2022). Soil investigations indicate contamination with it noted that site should be deferred from inclusion pursuant to a grant of permission as per Sections(c)(i) and (c)(ii). The appellant has attached a report outlining the extent of contamination.
- The land should be omitted from the RZLT map on the basis it is not zoned solely or primarily for residential use as per Section 635B(a). The lands are zoned mixed-use development and not for residential and should not be included.
- The lands should be excluded on the basis that the application of RZLT should only become applicable when a final grant of permission is secured with concerns

regarding the delays to securing permission including future litigation and that despite the applicant efforts to secure permission impediments have arisen through the planning process.

7.0 **Assessment**

7.1 The appeal grounds relate to inclusion on the map on the basis that the lands are contaminated and require remediation for such contamination to provide housing. Land that satisfies the relevant criteria for inclusion on the map includes under Section 635(c) states that it is reasonable to consider 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 known archaeological or historic remains. The appellant is claiming that contamination on this site requires remediation and have submitted an Environmental Assessment Report associated with the application on site in 2017 (ABP-300520-17) that outlines the details of this contamination.

7.2 Under Section 3.1.2 of RZLT guidelines in relation Contamination it is stated that “Lands which are unable to be developed due to the need for significant remediation are to be excluded from the scope of the measure. These are specifically identified as sites with a degree of contamination which would preclude residential development for the time being and which are on a verifiable register such as EPA sites licensed under Section 22 of the Waste Management Acts.

Where lands are not identified as an EPA Licensed Site, any submission to the Local Authority requesting exclusion from the draft or supplemental map on this basis should submit verifiable documentary evidence in the form of a preliminary site assessment report setting out the level of contamination on the land, sufficient to enable the Local Authority to assess whether the land in question should benefit from this exclusion (see section 653B(c) of the legislation)”.

7.3 Section 635(c) states that it is reasonable to consider 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 known archaeological or historic remains. In this case I am not convinced that contamination on the lands is of an extent that would preclude the provision of dwellings and that based on the report submitted the remediation measures are feasible as part of construction management associated with developing the site. I do not consider that the level of contamination has been demonstrated to have been significant enough to preclude the development of housing in this case and does not qualify for exclusion.

7.4 The appellant states that the site is not zoned solely or primarily for residential use being a mixed use zoning and should be excluded from inclusion on the RZLT map. The zoning of the site is Objective DC – ‘To protect, provide for and/or improve mixed use district centre facilities’ with Residential and Residential – Build to Rent both indicated as being ‘permitted-in-principle’. Section 635B(a)...

(a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use, or

(ii) for a mixture of uses, including residential use,

In this case the site is zoned for mixed use development including residential and qualifies for inclusion on the RZLT map.

7.5. In relation to the appellants’ argument regarding development being held up by the planning process or potential litigation (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.

7.6 Having regard to the above, I am of the view that the lands are suitably zoned for residential development and the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude provision of dwellings, 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 on the basis of the criteria under Section 635B(c) that the site is affected in its physical condition through contamination, is not zoned solely or primarily for residential development and that the site should not be included on the RZLT map until a planning permission is achieved with concerns regarding delays through the planning process and potential judicial review. The appellants have not demonstrated that the level of contamination of the site is to such an extent that would preclude the site from the development of housing. The site is suitably zoned for a mixture of uses including residential uses and qualifies under Section 635B(a) and 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.
- 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

09th August 2023