



An
Bord
Pleanála

Inspector's Report ABP-316457-23

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 Barrington Tower, 'Winterbrook' and 'Aras Eibhear,' Brennanstown Road, Dublin 18.
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	DM22/0030
Appellant(s)	Cairn Homes Properties Limited
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The subject lands are located on the southern side of the Brennanstown Road in Cabinteely, to the east of the junction of Claremont Road / Glenamuck Road and c 1.5 km to the west of Cabinteely village. The site includes the properties of 'Aras Eibhear' and 'Winterbrook' which are large detached houses, along with Barrington Tower (a Protected Structure) and is bounded to the west by Brennanstown Vale, a housing development characterised very large two storey dwellings, to the east by a private laneway that runs from Brennanstown Road to a private burial ground and to the south by Carrickmines Wood. The LUAS track runs south of the lands.

2.0 Zoning and Other Provisions

- 2.1. In the Dun Laoghaire Rathdown County Development Plan 2022 – 2028 the site is governed by zoning objective 'A' - 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'
- 2.2. The lands include Barrington Tower Protected Structure RPS No. 1729 described as 'Former Folly only.'
- 2.3. Specific Local Objective (SLO) 73 relates to the Brennanstown Road and states: *To limit development along the Brennanstown Road to minor domestic infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented.*

3.0 Planning History

Subject lands

TA06D-313281- SHD application for demolition of 'Winterbrook', and the former dwelling attached to Barrington Tower (a protected structure), construction of 534 no. Build to Rent apartments, creche and associated site works. No decision has issued in respect of this application to date.

PL06D.227861 / PA Ref.D07A/0161 – Permission granted in 2008 to demolish dwelling 'Winterbrook', construct 158 no. residential units, 2 new entrances onto

Brennanstown Rd. and associated works on lands adjacent to 'Barrington Tower', a protected structure. This permission was not implemented.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have the subject lands removed from the RZLT map on the basis the property does not yet have access to necessary wastewater infrastructure to facilitate development without the requirement for upgrades, that the Transport Section of the Local Authority and TII have objected to the current SHD on grounds of prematurity and that the Archaeological Impact Assessment (AIA) concludes isolated archaeological remains may exist on the lands.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site was in scope. The land is zoned solely or primarily for residential use. It is reasonable to consider it has access or can be connected to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development. It is reasonable to consider the land is not affected in terms of its physical condition by matters to a sufficient extent to preclude the provision of dwellings.

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The subject property does not yet have access to wastewater with sufficient service capacity necessary to develop the lands without upgrades to the existing network being required. The landowner will have to fund this upgrade/infrastructure which constitutes a substantial outlay. The site should not be included on the RZLT map until after a grant of permission is secured and requirements/costs for the wastewater upgrade are understood.

- The Transport Section of the Local Authority contend the SHD application pertaining to the lands is premature pending the upgrade of the Brennanstown Road. Transport Infrastructure Ireland (TII) objected to the SHD development on prematurity grounds pending opening of the LUAS station to the south. Reference is made in the appeal to Specific Local Objective 73.
- The Local Authority has determined that adjoining lands are to be excluded from the RZLT map because they are not serviced for road infrastructure with sufficient capacity to facilitate residential development (this decision is appended to the appeal documents).
- It is prudent to defer application of the RZLT until permission is secured on the lands and that any such permission does not include onerous conditions linking housing delivery to infrastructural works outside of the applicant's control.
- Despite the landowner's best efforts to secure permission on the lands, planning delays outside of their control have impacted progress on the lands.
- The lands did not have the appropriate access to public infrastructure on 1st January 2022.
- Application of the RZLT is inherently unfair.

6.2. Planning Authority Response

- No response on file.

7.0 Assessment

- 7.1. The comments raised in the appeal submission are noted. The site identified for inclusion on the RZLT map is zoned for residential use and the Planning Authority determined that the site remain on the RZLT map. The site is within an area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.
- 7.2. The grounds of appeal raise the issue of wastewater infrastructure capacity. Section 653B, of the Taxes Consolidation Act 1997 as amended, states lands to be included on the map should be serviced:

“(b) 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.”

7.3. The Act therefore asks that service capacity is available for development. Page 27 of the RZLT Guidelines expands upon this and sets out a ‘Serviced Land Definition’ on page 8 of the Guidelines, “...A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.” The definition also states that “Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022.”

7.4. In terms of wastewater infrastructure provision, the Drainage Planning Section of the Local Authority agree that upgrades are required.

Uisce Éireann’s (UÉ’s) report of January 2023 to the Local Authority confirms the site is serviced as there is a sewer located at the southern end of the site. The report also indicates that to accommodate the full SHD (as applied for) a sewer upgrade will be required of approximately 120 metres.

7.5. It is clear from the information on file that the site is serviced in terms of wastewater networks, but that wastewater infrastructure upgrades are likely to be required. As set out in the RZLT Guidelines, a need for network upgrades should not exclude lands, where sufficient treatment capacity exists. The UÉ wastewater capacity register indicates available capacity and I note the location of the foul sewer at the southern end of the lands.

7.6. The grounds of appeal also raise the issue of road infrastructure adjoining the lands to the north. I note the content of the Development Plan Specific Local Objective (SLO) 73 which limits residential development along the Brennanstown Road to minor domestic infills and extensions pending completion and implementation of a Traffic Management Scheme for the area. This SLO effectively limits residential development along the Brennanstown Road and as such it is reasonable to conclude

that the subject land does not have access to road infrastructure with sufficient service capacity available for the development of dwellings.

- 7.7. As such, I am of the opinion that the land does not satisfy criteria 653B (b) of the Taxes Consolidation Act 1997 as amended and that it is not serviced or does not have access to road infrastructure with sufficient service capacity available for such development.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the Local Authority and that the indicated site be excluded from the map.

9.0 Reasons and Considerations

- 9.1. Having regard to the determination by the Local Authority, the submitted grounds of appeal, Specific Local Objective 73 as contained in the Development Plan for the area, and the provisions of section 653B (b) of the Taxes Consolidation Act 1997, as amended, the site (zoned for residential use) is not considered in scope for the purposes of the RZLT map.

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.

John Duffy
Planning Inspector

19th September 2023