



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316506-23

---

<b>Type of Appeal</b>	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
<b>Location</b>	Lands at Cornerpark, Peamount Road, Newcastle, Co. Dublin
<b>Local Authority</b>	South Dublin County Council
<b>Local Authority Reg. Ref.</b>	SD-C259-14
<b>Appellant(s)</b>	Dragonglen Limited
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

1.1. The subject site is located within a recently developed residential estate (Corner Park Rise) and comprises of a gap site positioned between 4 no. semi-detached dwellings to the west and a terrace of 4 no. dwellings to the east. The site has an area of c. 0.15 hectares and fronts onto an existing residential estate road/ footpath to the south.

## 2.0 Zoning and other provisions

2.1. The subject site is zoned 'RES-N: New Residential' 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*'.

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

- *CS9 SLO1: To facilitate and commit to the delivery of Phase 1 residential lands at Burgage North in tandem with the delivery of 2 new street connections to main street and the provision of a new local park c. 0.3ha.*

## 3.0 Planning History

### 3.1. Planning History for the subject site

3.2. SD21A/0335 (Appeal Ref. No. ABP-312960-22): Dragonglen Limited. Permission for 6 houses/ amendment to partially completed development granted under SD19A/0040. Permission was REFUSED by South Dublin County Council on 11/02/2022 for 1 no. reason regarding a material contravention of condition no. 2 of planning reg. ref. no. SD19A/0040. This decision was subsequently appealed to An Bord Pleanála who decided to REFUSE permission on 30/06/2023 for the following reasons and considerations:

3.3. '*Having regard to: -*

- a) The South Dublin County Development Plan 2022 – 2028,*
- b) Policy CS9 to 'support the sustainable long-term growth of Newcastle by focusing development growth within the current settlement boundary and based on the ability of local services to cater for sustainable growth levels', and*

c) *The site being within an area zoned 'RES-N' which seeks 'to provide for new residential communities in accordance with approved area plans' while the area to the north of the site is zoned 'RU' with a stated objective 'to protect and improve rural amenity and to provide for the development of agriculture.'*

*The Board considered that there are no objectives or policies within the South Dublin County Development Plan 2022-2028 to support the provision for a vehicular access and footpath to the northern boundary of the site, and the proposed development would contravene materially condition number 2 attached to an existing permission (SD/19A/0040) where nothing has changed that would support a change to the extant permission. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

*In deciding not to accept the Inspector's recommendation to grant permission, the Board noted the existing access route to lands to the north and considered the development as proposed did not provide adequate justification for material contravention of an extant permission.'*

3.4. SD19A/0040: Dragonglen Limited. Permission for the demolition of the existing stables/sheds and construction of 28 no. dwellings. Permission was GRANTED on 18/11/2019 subject to 24 no. conditions.

3.5. Condition no. 2 of planning reg. ref. no. SD19A/0040 reads as follows:

*"Revised Plans*

*No development shall take place under this permission until the applicant, owner or developer has lodged with the Planning Authority for written agreement:*

*i. Revised plans that incorporate the following amendments for written agreement:*

*a) Road 1 shall not extend to the northern site boundary, it shall cease prior to the front building line of units 13 and 14.*

*b) The terrace of units 14 to 19 shall be relocated in a westerly direction with footpath, privacy strip and private amenity space for houses 13 and 14*

*absorbed into the space and a landscaped privacy strip provided to the east of the terrace at house 19.*

- c) A suitable location on the eastern side of the terrace of House Type C for bin storage for the residents of the block shall be indicated on revised plans and shall include details of height, depth, materials and screening and information demonstrating that the refuse storage facility has adequate internal space to cater for the size and number of bins allocated to each household within the terrace.*
- d) The side elevation - B on the eastern side of the terrace of House Type C shall incorporate the same window features at both ground and first floor level as that of side elevation - A.*
- e) Details of suitable vehicular access to unit 13.*
- f) Further details of the proposed gossip walls including depths, heights and materials for all properties where they are proposed. The applicant, owner or developer may consult with the Planning Authority in advance of lodging the required revised plans.*

*Reason: To ensure that adequate space is provided for defensible space, bin storage and residential amenity.”*

#### **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 Submission to the Local Authority is summarised as follows:

- 2 no Land Parcels are referenced namely SDLA00111944 and SDLA00111594. The assessment/ report of the Local Authority solely relates to the latter land parcel, SDLA00111594.
- Permission in place for terraced housing. If constructed would result in poor estate management as they would effectively landlock the adjoining agricultural lands to the rear/ north.

- Reference is made to planning reg. ref. no. SD21A/0335. A decision on the appeal is awaited.
- If the Appeal of SD21A/0335 is refused the Appellant will be left with no option but to initiate Judicial Review proceedings for which *inter alia* declarations will be sought to the effect that the provisions of the Tax Consolidation Act inserted by the Finance Act 2021 relating to the Residential Zoned Land Tax, such that they preclude the landowner from applying the principles of good estate management, represent an unwarranted attack on the landowner's property rights which are protected by Article 40.3.2 of the Constitution.

## 5.0 Determination by the Local Authority

- 5.1. Local Authority Decision: To retain Land Parcel SDLA00111594 on the map.
- 5.2. It has been determined that the site in question 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

- The Appellant seeks to remove the subject lands from the RZLT Mapping.
- The site has planning permission under planning reg. ref. no. SD19A/0040. The applicant sought to retain vehicular access to the agricultural lands to the rear. Condition no. 2 of said permission prohibits such an access.
- The Appellant reapplied for permission under planning reg. ref. no. SD21A/0335. This application (SD21A/0335) is the subject of an appeal (see ABP-312960-22) for which at the time of the Appeal submission dated 25/04/2023 was still pending. (A decision has since been made in relation to this Appeal, see Section 3.0 above, Planning History).
- The Appellant states that where this permission is refused by An Bord Pleanála and the subject Parcel is retained on the Map, they will have no option to institute judicial review proceedings in which *inter alia* declarations will be sought to the effect that the provisions of the Tax Consolidation Act inserted by the Finance Act 2021 relating to the Residential Zoned Land Tax, such that they preclude the landowner from applying the principles of good estate management, represent an unwarranted attack on the landowner's property rights which are protected by Article 40.3.2 of the Constitution.

## 7.0 Assessment

- 7.1. The comments raised in the appeal are noted.
- 7.2. The Grounds of Appeal do not relate to any of the relevant qualifying criteria set out in Section 653B of the Act.
- 7.3. Permission has been refused under planning reg. ref. no. SD21A/0335 (Appeal Ref. No. ABP-312960-22). A decision was issued on 30/06/2023. I am unaware of any Judicial Review Proceedings in relation to this said application.
- 7.4. There is still an extant permission pertaining to residential development on the site, as planning reg. ref. no. SD19A/0040 refers.

7.5. I am satisfied that the subject site satisfies the criteria for inclusion on the map as per the provisions of Section 653 B b) of the Act, which states *'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, ..'*

## 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-C259-14 (Land Parcel ID: SDLA00111594), 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  
27<sup>th</sup> July 2023