



An
Bord
Pleanála

Inspector's Report

ABP-316509-23

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

Stephenstown, Balbriggan, Co. Dublin.

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

RZLT066/22

Appellant(s)

Dean Swift Property Holdings Limited Company

Inspector

Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is located to the south of Clonard Road and the R122. This appeal relates to RZLT land parcel no. FL0000002059 (adjacent to concurrent RZLT appeals reg. ref. ABP-316544-23 & 316509-23 on RZLT land parcels no.FL0000002178 and FL0000002193). The site bounds school buildings to the west and the Millfield Shopping Centre to the east. Further to the north on the opposite side of the R122 there are additional school buildings and The Taylor Hill residential estate.

2.0 Zoning and other provisions

- 2.1. The site is zoned RA – Residential Area and within the defined Development Boundary for Balbriggan under the Fingal County Development Plan 2023-2029. The site was previously zoned RA – Residential Area under the Fingal County Development Plan 2017-2023 which was the plan in force at the time the Local Authority determined that the site was in scope for the RZLT Maps.

3.0 Planning History

- 3.1. Reg. Ref. F13A/0396 Planning permission GRANTED on 27th January 2014 for a new access/distributor road to serve the secondary school.

- 3.2. Adjacent Sites:

- 3.3. To the north west on the opposite side of the R122 and extending to Flemington Road to the north

- Reg. Ref. F17A/0372 Appeal Reg. Ref. ABP-249267, for alterations to previously approved residential development (planning register reference number F07A/1249, An Bord Pleanála appeal reference number PL 06F.231457) consisting of the omission of the following sections of the previously approved residential development: “Flemington Village” (superceded by planning register reference numbers F13A/0240 and F15A/0437), “Naul Park” (superceded by planning register reference number F15A/0550), “River Court” and “Hampton Court” (superceded by planning register reference number F15A/0242, approval for development of Saint George’s National School and Coláiste Ghlór na Mara Secondary School).

The omission of the above sectors of development results in an altered permission comprising only Phase 1 public open space to the north-west (as amended by planning register reference number F15A/0550), “Boulevard” Road, and the “Ladywell Avenue” sector of development located in the southwest corner of the site, which comprises a total of 233 number dwelling units, consisting of 89 number houses and 144 number apartments, landscaped public open space including public park (as amended under planning register reference number F15A/0550), piped and other services, roads and footpaths, refuse storage, Electricity Supply Board substations, landscaping and boundary treatments and all associated site development works. Works also include construction of the partially completed “Boulevard” Road running from the intersection with the proposed C Ring Road south to the Naul Road. REFUSED for one reason relating to the design and layout of the proposed development, particularly in relation to pedestrian and cyclist permeability, roads infrastructure and the quality of the open spaces, which failed to adequately meet the more recent residential development standards. 16th April 2018.

- Reg. Ref. F08A/1329 a ten year planning permission to construct a development incorporating 532 no. dwellings, the Balbriggan C-Ring Road and boulevard, a major regional Class 1 public park and an urban square/civic space. GRANTED 14th September 2009. Note Reg. Ref. F08A/1329/E1 approved extension of planning consent until 25th February 2025. Condition no.5 requires agreement with the Planning Authority on transport details, and agreement has not been secured to date.

3.4. Lands to the north and parallel to Taylor Hill Boulevard:

- Reg. Ref. F21A/0055 ('Ladywell' within the townlands of Clonard or Folkstown Great, Clogheder & Flemington, Balbriggan, Co. Dublin) Reg. Ref. ABP-312048-21 for 99 units. Decision not yet made.
- Reg. Ref. F22A/0526 – Permission GRANTED for 10 year consent for Phase 3B as well as roads, services and public space relating to the overall Phase 3 Ladywell lands, including 95 no. dwellings, roads and services. 4th May 2023.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. The submission states that the development may not be served by adequate road infrastructure. Previous permissions nearby the submission lands have been granted subject to the provision of a 'C-road' and improvements of junctions, thus showing that the existing network is not suitable to accommodate development. Development of the lands would directly contravene Objective Balbriggan 11 as the roads do not have the capacity to accommodate increased levels of traffic. Further development would without upgrades to the road network result in unsafe, hazardous infrastructure and thus be against the development plan standards.

5.0 Determination by the Local Authority

5.1. The local authority states that the subject site is serviced. Uisce Éireann confirm that the site is serviceable for water supply. A 300mm diameter watermain runs along the R122 to the north-west of the sites and a 2nd 300mm dia. Watermain runs along the road that bisects the two northern portions of the landholding. In relation to wastewater, development of the area is not impeded, however developer provided infrastructure is required. The Planning Authority's Water Services Department notes that there are services in the vicinity and it is reasonable to expect such works to be included as part of any future planning application.

5.2. The following is noted from the RZLT Guidelines:

'Where provision has been made, but not yet constructed for road and pathway access through Local Authority consenting processes, then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.' Pg.24

'In certain instances, phasing of particular settlements via an SDZ, LAP or non-statutory land use plan may require significant road or public transport infrastructure to be in place prior to development. Where such plans allow for a certain quantum of residential development prior to such projects being permitted or constructed, all of

the land which may be able to access the infrastructure, or if specifically identified in the plan, the relevant phased area of land, should be considered in scope.’ Pg.27

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 subject lands form an essential component of the landowners agricultural business, comprising fertile, free draining, sandy soils which are ideal for farming. Reference to Our Rural Future Rural Development Policy 2021-2025. Reference to comments made by Minister for Finance that lands being actively used for farming, and not vacant or idle, will not be liable for the tax.
- ‘Further Reasoning’, the submission lands are serviced by existing road infrastructure, however development of the lands may lead to intensification of the use of the road, thus adding additional traffic to an already over-capacity road network. Each parcel would be served by the R122 which is the key route into and out of Balbriggan town centre. Road infrastructure and junction upgrades required. Development of the lands would directly contravene Objective Balbriggan 11 as the roads do not have the capacity to accommodate increased levels of traffic. Further development would without upgrades to the road network result in unsafe, hazardous infrastructure and thus be against the development plan standards. In relation to surface water, wastewater and water supply, noted that Irish Water have noted capacity issues in the area. The lands are not served by adequate water infrastructure to facilitate the larger form of development.

7.0 Planning Authority Response

7.1. Additional commentary included in the appeal submission stating that the lands form an essential component of the appellants agricultural business are noted. In this regard, and as indicated in the Guidelines, the use of land for agricultural or

horticultural purposes are not considered to be exempted from scope as they are not subject to rates.

8.0 Assessment

- 8.1. The appeal grounds states that the development of the site is prevented due to inadequate road infrastructure / capacity. There is no evidence submitted by the appellant to demonstrate that this is the case. There is access to the site via the relatively recent distributor road which serves the school and includes both cycle and pedestrian infrastructure.
- 8.2. Uisce Éireann confirm that development of the lands is not impeded by the ability to connect to water/wastewater services, with connection via public roadways, and the wastewater treatment capacity register confirms that there is capacity for Balbriggan.
- 8.3. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.

9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

10.0 Reasons and Considerations

- 10.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the Guidelines for Planning Authorities

on the Residential Zoned Land Tax, the site is considered in scope for the purposes of the RZLT map.

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.

Rachel Gleave O'Connor
Senior Planning Inspector

07 July 2023