



An
Bord
Pleanála

Inspector's Report

ABP-316530-23

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	Flemington, Balbriggan, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT002/22
Appellant(s)	Bobby Jones
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is located to the west of the R132 to the rear (north) of properties fronting Bremore Cottages. To the west, north and east of the site there are agricultural fields.

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 is also subject to a wider land parcel Specific Objective for Local Area Plan ‘LAP 4.B’ and a Road Proposal is located to the north of the site. 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. At that time the site was subject to a Specific Objective requiring a masterplan ‘MP 4.A’ for a wider site area which took in the subject site.

3.0 Planning History

- 3.1. Reg. Ref. F18A/0133 / ABP-301845-18 – 21st December 2018 Planning Permission REFUSED on Appeal to An Board Pleanála for (i) Construction of 74 no. dwellings [30 no. two-storey, three-bedroom, semi-detached dwellings; 6 no. two-storey, three-bedroom, detached dwellings; 5 no. two-storey, four-bedroom, detached dwellings; 1 no. two-storey plus attic, four-bedroom, detached dwelling; 28 no. two-storey plus attic level, four bedroom, semi-detached dwellings and 4 no. two storey plus attic, five-bedroom detached dwellings] Each dwelling will feature private amenity space, 2 no. on-curtilage parking spaces and optional roof mounted solar panels; (ii) creation of new vehicular entrance from Drogheda Road (R132); (iii) landscaped public open space including playground; tree planting, boundary treatments; street lighting; internal roadways, footpaths and shared surfaces (iv) foul and SuDS drainage; and (v) all ancillary works necessary to facilitate the development. Refused for 3no. reasons, firstly relating to lack of a masterplan as required under the Development Plan (MP 4.A); secondly inefficient density (being 27uph and less than the minimum

30uph set out in guidelines; and lastly with reference to Objective DSM74 of the Development Plan 2017-2023 and the provision of underground storage tanks and storage systems under public open space, as part of a SuDS solution

3.2. Adjacent Sites:

3.3. Lands further to the west of the subject site, north of, and fronting Flemington Lane, Reg. Ref. F18A/0137 Permission REFUSED on appeal to An Bord Pleanála Reg. Ref. ABP-301843-18 for 73 units, due to 3no. reasons, firstly relating to lack of a masterplan as required under the Development Plan (MP 4.A); secondly inefficient density (being 27uph and less than the minimum 30uph set out in guidelines; and lastly with reference to Objective DSM74 of the Development Plan 2017-2023 and the provision of underground storage tanks and storage systems under public open space, as part of a SuDS solution. 21st December 2018.

3.4. Lands to the south west of the subject site, extending from Flemington Road to the north, to the R122 to the south:

- 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.

3.5. Lands to the west partly fronting Flemington Lane Reg. Ref. ABP-314446-22 SHD for 127 units. Permission REFUSED due to the absence of adequate pedestrian and bicycle infrastructure (on Flemington Lane) connecting the site to Ballbriggan town centre and poor availability of public transport at the location. 20th March 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 despite efforts made, the landowner has been unable to get planning permission from FCC to build houses on it. Applied to FCC in January 2018 for planning permission to build houses on the land, but the application was rejected. Prior to submitting the application, a meeting was sought with planners at FCC but this request was refused. Willing to address the reasons for refusal, however the preparation of an approved MP for the block of land is deemed to be entirely a matter for FCC itself. Also note, that in July 2017 the landowners at Flemington submitted a draft MP for the entirety of the zoned lands at Flemington to FCC. This draft MP had been professionally prepared, in close

cooperation with the planners and roads experts in FCC, but it was never pursued internally after it was lodged with FCC.

- 4.2. Appealed to ABP, this was refused, FCC advised that the MP would be completed in 2019, this did not happen. It was requested the LAP designation be removed, but this was voted down by members.
- 4.3. The FCC Executive has stated that the construction of houses at Flemington will remain on hold until such time as funding for a link road from the R122 to the R132 is in place. The funding of this road needs to be urgently tackled by FCC and the roads section of the Department of Housing, Heritage and Local Government.

5.0 Determination by the Local Authority

- 5.1. 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

- Strenuous efforts made on many occasions during the past 10+ years to build houses on the land.
- The land is integral to the operation of a pedigree livestock trading business and cannot be classified as 'vacant or idle', reference to the Minister for Finance's comments regarding the same.
- The RZLT should not apply where the landowner can demonstrate that they are attempting to deliver residential units.
- A MP for the lands was developed by landowners and submitted to FCC on 31st July 2017.
- As FCC needs to bring forward the MP or LAP for the site, the landowners in Fingal have no influence on the timing of the preparation of MPs (and LAPs or FPs).
- Planning application ref.F18A/0133 refused by FCC for absence of a MP, with a density level deemed to be too low, use of underground water storage tanks

and absence of a creche. ABP refused appeal ref.301485-18, ABP consulted with FCC who confirmed that the MP would be completed in 2019. In a letter of correspondence from FCC dated 2019, it confirmed that the MP would be included in the 2020-2023 body of work. In 2020, FCC Executive informed that they had changed its mind and no action would be taken in the foreseeable future to prepare a MP for Flemington.

- During the preparation of the new Development Plan, the OPR questioned the appropriateness of applying a LAP requirement to such a small area of land. Elected Councillors from Balbriggan sought to have the LAP requirement for Flemington removed.
- All landowners have demonstrated that they want to build houses on their lands at Flemington.
- The lands cannot be developed at this time due to the absence of an approved LAP.

7.0 Planning Authority Response

7.1. Additional commentary included in the appeal submission stating that the lands are integral to the operation of a pedigree livestock trading business and cannot be classified as vacant or idle. 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 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.

- 8.2. The appeal grounds states that the requirement for a Masterplan to be developed over lands at Flemington, including the subject site, is thwarting the ability to bring forward the site for residential development. The current Development Plan 2023-2029 includes a requirement for a Local Area Plan (Specific Objective LAP 4.B Flemington Local Area Plan), however at the time of the determination of the Local Authority to include the site on the RZLT Map, there was no Specific Objective for a LAP and the requirement related to a Masterplan in the Development Plan 2017-2023 in force at that time.
- 8.3. While I note that planning permission has previously been refused on the site, under the former Development Plan 2017-2023, due to a requirement for a Masterplan. The requirement for a Masterplan is not a statutory designation and is not included in the criteria for exclusion as set out under section 653B of the Act. As such, the site was in scope for the RZLT Maps at the time of the Local Authority's determination.

9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the local authority.

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