



An
Bord
Pleanála

Inspector's Report

ABP-316583-23

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	Lands at Cherrywood, Cabinteely, Dublin 18.
Local Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	DM22/0053.
Appellant(s)	William Neville & Sons.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as DM22/0053 (Parcel ID DELA00000026, DELA00000028, DELA00000031, DELA00000032, DELA00000033, DELA00000034 and DELA00000036) refer to lands within the Cherrywood Strategic Development Zone.

Cherrywood SDZ is located close to Cabinteely village, north of Loughlinstown and west of Ballybrack. Within the SDZ the appeal lands are located to the west of Willow Court, to the north of the R118 and are bisected by the LUAS Greenline.

2.0 Zoning and other provisions

Policy Objective CS9- Strategic Development Zone. 'it is a policy objective to continue to implement the approved planning scheme for the Cherrywood Strategic Development Zone'.

The lands are located on with the Cherrywood Strategic Development Zone (SDZ). The Planning Scheme designates the lands for Residential Use.

3.0 Planning History

Cherrywood SDZ.

Relating to the appellant, applications of note include:

DZ15A0758 for infrastructure works (granted 2016)

DZ17A0714 for 240 dwellings (granted 2018, commenced 2020 and is ongoing)

DZ21A/0414 for 99 residential units.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the draft map, requesting that lands be excluded on the basis that the lands are being actively developed.

5.0 Determination by the Local Authority

The local authority determined that:

1. The land is zoned for solely or primarily for residential use.
2. It is reasonable to consider that land may have access, or be connected, to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development.
3. It is reasonable to consider that 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

Notes that the Determination not served on the submitter/landowner.

Grounds of appeal are summarised as follows:

The lands are located within Cherrywood SDZ.

- The appellants have extensive planning history with Cherrywood SDZ: DZ15A0758 for infrastructure works (granted 2016). DZ17A0714 for 240 dwellings (granted 2018, commenced 2020 and is ongoing). DZ21A/0414 for 99 residential units. And between 2020-2022 detailed submissions regarding amendments to Planning Scheme which remains on going.
- Infrastructure and Phasing. The Cherrywood Planning Scheme is submitted to be de facto Development Plan for the lands and as such there is sequential/phasing of development.
- WNS has delivered significant infrastructure within their lands to ensure Phase 1 of the development could be progressed.

- In accordance with the Cherrywood SDZ Planning Scheme the 360ha landbank which is intended to accommodate c.8000 residential units must be developed sequentially and upon delivery of infrastructure, parks and schools.
- It is unreasonable to conclude that all lands at Cherrywood are serviced as the planning authority determines this when assessing each application.
- WNS have worked consistently to secure planning permission and deliver infrastructure and residential in compliance with the Planning Scheme and it would be grossly unjust and counter-productive to impose a blanket tax on the lands.

7.0 Assessment

The grounds of appeal also submit that it would be unjust to impose a blanket tax on the SDZ lands where developers are actively engaged with delivering the Planning Scheme.

Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states that "*in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only*".

Page 7 of the RZLT Guidelines state *“to satisfy the criteria as identified in section 653B, land must be zoned residential use or for mixed uses including residential within a Development Plan, Strategic Development Zone Planning Scheme or a Local Area Plan. This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed use zonings where residential development are permitted in principle.”*

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) ‘is included in a development plan’ or ‘local area plan’ zoned solely or primarily for residential use, or for a mixture of uses including residential. The appeal lands are in scope of section 653B(a).

The grounds of appeal submitted that the appeal lands are located within Cherrywood SDZ and that the Planning Scheme requires the sequential delivery of infrastructure, residential units and associated community/social infrastructure. The phased delivery of Planning Scheme is not a criteria for exclusion under Section 653B of the Taxes Consolidation Act 1197 as amended.

The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended.

For the purposes of falling within the scope of RZLT the criteria is whether it to ‘is reasonable to consider’. In this instance it is likely that to access to the lands and access to public infrastructure works would be required on third party lands outside of the ownership of either the appellant or local authority and my opinion it is not reasonable to that the land may have access to, or be connected to public infrastructure and on this basis the lands satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Having regard to the foregoing I consider that the lands identified as DM22/0053 (ParcelIDDELA00000026,DELA00000028,DELA00000031,DELA00000032,DELA00000033,DELA00000034,and DELA00000036) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The lands identified as DM22/0053 (Parcel ID DELA00000026, DELA00000028, DELA00000031, DELA00000032, DELA00000033, DELA00000034, and DELA00000036) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map. And I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as DM22/0053 (Parcel ID DELA00000026, DELA00000028, DELA00000031, DELA00000032, DELA00000033, DELA00000034, and DELA00000036) on the final map.

9.0 Reasons and Considerations

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 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The land identified as DM22/0053 (Parcel ID DELA00000026, DELA00000028, DELA00000031, DELA00000032, DELA00000033, DELA00000034, and DELA00000036) are considered in scope of section 653B(a). The lands are located 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 in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance with the residential use that applies to these lands identified as DM22/0053 (Parcel ID DELA00000026, DELA00000028, DELA00000031, DELA00000032, DELA00000033, DELA00000034, and DELA00000036) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

I confirm that the report represents my profession 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.

Dáire McDevitt

Senior Planning Inspector

18th September 2023