



An
Bord
Pleanála

Inspector's Report

ABP-316589-23

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 Priorsland, Glenamuck Road North, Carrickmines, Dublin 18.
Local Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	DM22/0003.
Appellant(s)	Mairead Smith.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as DM22/0003 (Parcel ID DELA00000016 and DELA00000042) refer to lands at Priors Land, Glenamuck Road North in Carrickmines, Dublin 18.

Cherrywood SDZ is located close to Cabinteely village, north of Loughlinstown and west of Ballybrack. Within the SDZ the lands area located to the northwest, immediately to the south of the LUAS Greenline and to the west of the LUAS Park n Ride at Carrickmines. There is a residential dwelling currently occupying the land.

The Determination was issued to Mr Donal Smith, Smith Foy & Partners LLP.

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

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 not a 'relevant site', invalid newspaper notice and unlawfully dived into two parcels.

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:

1. The Smith land is unlawfully included on the Draft Map and the Draft Map must be amended so that the Smith land is not included.
 - The lands are located within Cherrywood SDZ. Land uses indicated on Planning Schemes do not constitute zonings. The lands are not zoned in accordance with section 10(2)(a) of the Planning and Development Act 2000, therefore not within scope of the RZLT.
 - The reasoning given by DLR for its decision is not in accordance with the statutory requirements of TCA 1997. There is nothing under Section 653B which states that lands which are included in a SDZ Planning Scheme are to be included for the purposes of these taxing provisions.
 - The Ministerial issuing of Section 28 Guidelines relating to the Finance Act 2021 or the Taxes Consolidation Act 1997 is ultra vires, null and void with no legal effect. Section 28(1) only permits the Minister to issue guidelines relating to the performance of a local authority's functions under the PDA 2000.
 - There is no reference to SDZ lands in section 653B of the TCA 1997. The Minister cannot use guidelines to make law where guidelines go beyond the scope of the statute they are null and void.

- The reliance on departments guidelines is wrong. They are not a statutory instrument. DLR has erred in law and exceeded the scope of its function in this instance.
2. The Smith Land is unlawfully divided into two parcels of land of the Draft Map and the Draft Map should be amended to show the Smith Land as a single undivided site.
- All of the Smith land is used and enjoyed by the dwelling on the Smith land.
 - There is no legal basis under the legislation for dividing land deemed to satisfy the relevant criteria into separate sites by reference to permitted uses in a planning scheme.
 - The Smith land is not a relevant site for the purposes of Part 22A of the TCA 1997.
 - The Smith land is unlawfully being treated differently to other landholdings in close proximity.
 - DLR did not address this matter.
3. The Newspaper Notice is invalid.
- The Notice is invalid as it does not replicate the entire text of the Section 653B of the TCA 1997.

7.0 Assessment

The grounds of appeal highlight that the DLR Determination was not served on the landowner but on an agent acting on behalf of the owner. The appeal is lodged by the landowner (Mairead Smith) which is noted also as the appellant.

The grounds of appeal also submit that the lands are not ‘relevant lands’ and furthermore are unlawfully subdivided into two parcels. The lands in their entirety are associated with the existing dwelling on the lands.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets out that ‘a number of exemptions are also set out within the provision, and while existing permanently -occupied residential dwellings will be indicated on the maps where located within a residential zoning, homes are not within the scope of the tax and the owners of such properties will not be liable for this tax.’

Section 3.1.1 of the guidelines includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that *“Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps, however homeowners of residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation).*

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. The legislation does not give the board a role in determining whether a site is a ‘relevant site’ by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. 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”.*

Whether the site complies section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

The grounds of appeal submitted that the appeal lands are located within Cherrywood SDZ. Land uses indicated on Planning Schemes do not constitute zonings. It is submitted that the lands are not zoned in accordance with section 10 (2)(a) of the Planning and Development Act 2000, therefore not within scope of the RZLT. The Ministerial issuing of Section 28 Guidelines relating to the Finance Act 2021 or the Taxes Consolidation Act 1997 is ultra vires, null and void with no legal effect. Section 28(1) only permits the Minister to issue guidelines relating to the performance of a local authority's functions under the PDA 2000. And that there is no reference to SDZ lands in section 653B of the TCA 1997.

I note the argument presented. The Residential Zoned Land Tax – Guidelines for Planning Authorities June 2022 were introduced under section 28 of the Planning and Development Act 2000 as amended to promote the activation of land for housing provision and the associated benefits results, such as the regeneration and sustainable development of settlements. The principle purpose of the Guidelines is to provide assistance to local authorities, An Bord Pleanála and other stakeholders in the process of mapping the lands which will be subject to the RZLT. *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.* The legislative basis for the RZLT Guidelines is beyond the scope of this report which as set out above, An Bord Pleanála is restricted to considering whether the lands meet the qualifying criteria set out in section 653 only.

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 within scope of section 653B(a).

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The grounds of appeal also submit that the Newspaper notice was invalid. As set out above the role of An Bord Pleanála is restricted to considering whether the lands meet the qualifying criteria set out in section 653 only. Procedural matters are not within the scope of this report.

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

Having regard to the foregoing I consider that the lands identified as DM22/0003 (Parcel ID DELA00000016 and DELA00000042) 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 DM22/0003 (Parcel ID DELA00000016 and DELA00000042) are considered in scope of section 653B(a).

The lands identified as DM22/0003 (Parcel ID DELA00000016 and DELA00000042) 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 DM22/0003 (Parcel ID DELA00000016 and DELA00000042) 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 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The land identified as DM22/0003 (Parcel ID DELA00000016 and DELA00000042) 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 applies to these lands. is portion of the lands identified as DM22/0003 (Parcel ID DELA00000016 and DELA00000042) 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