



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316603-23

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<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>	Stocking Lane, Ballyboden, Dublin 16.
<b>Local Authority</b>	South Dublin County Council
<b>Local Authority Reg. Ref.</b>	SD-C259-29
<b>Appellant</b>	Estate of Elizabeth Barnes
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

1.1. The subject site is located on the eastern side of Stocking Lane (R115 Regional Road). The site has extensive frontage onto Stocking Lane to the west and has a stated site area of 2.494 hectares. The site is undeveloped at present and is surrounded to the north, south and east by established residential development.

## 2.0 Zoning and other provisions

2.1. The subject site lands are zoned 'Objective RES' in the South County Dublin Development Plan, 2022 to 2028. The relevant zoning objective is *'to protect and/ or improve residential amenity.'*

2.2. There is a Protected Structure on the lands to the immediate north, RPS Ref. 327 (Two Storey Georgian Style House). There is a also separate Protected Structure on the adjacent lands to the west on the western side of Stocking Lane, RPS Ref. 333 (Reservoir).

2.3. There is an indicative road upgrade route shown along Stocking Lane to the west of the subject site.

The following text applies to the said indicative road link:

- Name: Ballyboden Road/Stocking Lane (R115)
- Description: Upgrade of existing road.
- Function: To enhance pedestrian and cycling facilities and exploit the tourist potential of the route.

## 3.0 Planning History

### 3.1. Relevant Planning History

3.2. SHD3ABP-311616-21: Strategic Housing Development – Application. Applicant: McCabe Durney Barnes. Permission for 131 no. residential units (21 no. houses, 110 no. apartments), childcare facilities and associated site works. Permission was GRANTED on 16/02/2022 subject to 30 no. conditions. This decision is the subject of

current JUDICIAL REVIEW proceedings, no. 304, Ballyboden Tidy Town Group v An Bord Pleanála and the Attorney General.

- 3.3. SHD3ABP-308763-20: Strategic Housing Development – Application. Applicant: McCabe Durney Barnes Limited. Permission for 131 no. residential units (21 no. houses, 110 no. apartments), creche and associated site works. Permission was REFUSED on 25/03/2021 for the following reasons and considerations:

*‘Having regard to the provisions of the South Dublin County Development Plan 2016-2022, specifically Housing (H) Policy 9 – Objective 3 requiring proposals to comply with Section 11.2.7 of the South Dublin County Development Plan 2016-2022, which states that new residential development that would adjoin existing one and/or two-storey housing, shall be no more than two storeys in height, unless a separation distance of 35m or greater is achieved, and to the form, height and layout of the proposed development, it is considered that the proposed development materially contravenes the Housing (H) Policy 9 – Objective 3 of the South Dublin County Development Plan 2016-2022.*

*Furthermore, the statutory requirements relating to public notices and the submission of a material contravention statement have not been complied with by the applicant. Accordingly, the Board is precluded from granting permission in circumstances where the application is in material contravention of the development plan and where the statutory requirements referred to above have not been complied with.’*

- 3.4. SD18A/0225: Applicant: McCabe Durney Barnes Limited. Permission for 3 no. apartment blocks, two and three storeys in height. Permission was REFUSED on 13/08/2018 for a total of 8 no. reasons which, in summary, relate to the proposed layout not providing for perimeter apartment blocks, the provision of poor quality public open space, the failure to provide a children’s play area, non-compliance with the Design Manual for Urban Roads and Streets (DMURS) in relation to carriageway and pathway widths, insufficient detail in relation to surface water management, the provision of six single-aspect, north-facing only apartments, a number of design flaws, the failure to meet minimum housing standards and inadequate tree planting provision on site.

#### **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 Appellant contend that the subject lands do not fall within the scope for the RZLT as it is not possible to gain access to public infrastructure owing to the current JR proceedings.
- 4.3. The Appellant states that the Local Authority has failed to comply with statutory requirements in relation to public notices.

#### **5.0 Determination by the Local Authority**

- 5.1. Local Authority Decision: To retain Land Parcel SDLA00100998 on the map.
- 5.2. It has been determined that Land Parcel SDLA00100998 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

6.2. The Grounds of Appeal are summarised as follows:

- Basis of Appeal against Inclusion on RZLT Map:
  - The Appellant refers to Section 653C(2) a) of the Act.
- Access to Public Infrastructure:
  - The purpose of the Act is a mechanism to incentivise the use and development of underused or vacant sites, not to raise revenue. In that context, it is logical that the owner should not be burdened with the tax where the imposition of the tax would prevent, rather than encourage, the activation of land for residential development. The current JR proceedings are preventing the owner from gaining access to public infrastructure.
  - The Appellant states that the owner tried to bring the site forward for development and that permission was issued by an Bord Pleanála and supported by South Dublin County Council. It is the understanding of the Appellant that the tax is payable 653AE (6) of the TCA, in the event that the Bord's decision is quashed. The Appellant strongly contends that this is contrary to natural justice, where an individual is made liable for a tax in a scenario whether there is a failure of an organ of the state to properly discharge its statutory functions.
- Date on Satisfying Relevant Criteria and Failure to comply with statutory requirements:
  - The Appellant considers that the maps should show the zoning of each parcel of land proposed for inclusion, along with the date that the land is considered to fall into scope whether that that date is after 1<sup>st</sup> January 2022, being land 'satisfying the relevant criteria' as set out at Section 653B.
  - The Appellant states that the Draft Maps have been reviewed. The Appellant further states that 653C specifies what should be contained on

the draft map. The Appellant refers, in particular, to Section 653B (1) (b) (i), i.e. the relevant date of 1<sup>st</sup> January 2022. The Appellant states that the draft maps do not specify the date and that therefore it can be taken that the relevant date is 1<sup>st</sup> January 2022. The Appellant is of the opinion that the public consultation process is fundamentally flawed and has prejudiced landowner rights. The Appellant references Section 653 C (3) which relates to the publication of a Public Notice and Section 653 C (4) which prescribes what should be in the said notice. A copy of the public notice is attached as Appendix 2 of the Appeal submission. The Appellant refers to specific text from the notice and an extract from the Local Authority website. The Appellant states that the offices of the Local Authority were visited on Wednesday 28<sup>th</sup> December 2022 at 12.55pm, which is stated to fall within the normal working week. It is stated that there was a notice on the door indicating that the offices were shut from the 23<sup>rd</sup> December 2022 at 12 pm until 3<sup>rd</sup> January 2023 at 9.00 am.

- The Appellant states that it is clear from the notice on the website that the offices should have been open to allow for inspection of this important document.
- The purpose of this visit is stated to have been to review the map and associated details, including total area in hectares which, it is stated, needs to be specified on the map in accordance with Section 653B (1) (b) (ii).
- It is stated that the Appellant's access to internet information has been curtailed due to technical difficulties.
- The Appellant states that the rights to review this critical information prior to the submission deadlines of 1<sup>st</sup> January 2023 has been seriously prejudiced.
- Requested Amendment:
  - The Appellant contends that the subject lands do not fall within the scope for the RZLT as it is not possible to gain access to public infrastructure owing to the current JR proceedings.

- The Appellant states that the Local Authority has failed to comply with statutory requirements in relation to public notices.
- The Appellant requests that the subject lands be removed from the RZLT Map.

## **7.0 Assessment**

- 7.1. The comments raised in the appeal are noted.
- 7.2. Having regard to the permitted development on the site, which is the subject of judicial review proceedings, this is not included in the criteria for exclusion as set out under Section 653B of the Act, therefore this ground of appeal should be dismissed.
- 7.3. The Grounds of Appeal do not relate to any of the relevant qualifying criteria set out in Section 653B of the Act.

## **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-C259-29 (Land Parcel SDAL00100998), 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.

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Frank O'Donnell

Planning Inspector  
3<sup>rd</sup> August 2023