



An
Bord
Pleanála

Inspector's Report

ABP-316616-23

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 Kilgobbin Lodge, Kilgobbin Road, Dublin 18.

Local Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

DM22/0002.

Appellant(s)

WKN Real Estate Advisors on behalf of Lawless Family.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as DM22/0002 (Parcel ID DELA00000506) refer to lands at Kilgobbin Lodge located to the southeast off the Kilgobbin Road via a lane which has signage indicating it is private in Dublin 18.

2.0 Zoning and other provisions

Ballyogan and Environs Local Area Plan 2019-2025 and the Dun Laoghaire Rathdown County Development Plan 2022-2028.

The lands are zoned Objective A 'to provide residential development and improve residential amenity while protecting the existing residential amenities.'

ED 'proposed education site' indicated.

6 year road Objective/Traffic Management/Active Travel upgrade) along the western boundary (The Clay Farm Loop Road).

3.0 Planning History

None noted.

To the southwest ABP 314131-22 refers to a current SHD application with the board for 118 residential units and creche.

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 land cannot be accessed and the provision of access is beyond their control as the section of the loop road constructed is not taken in charge.

5.0 Determination by the Local Authority

The local authority determined that:

1. The land is zoned 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

Grounds of appeal are summarised as follows:

- The Lawless family residence, Kilgobbin Cottage, is included on the lands identified by DLRCC for inclusion on the RZLT maps. The private residence should be removed. This would reduce the total area from c.3.79ha to 3.385ha.
- Land Parcel ID DELA00000506 complies with section 653B(a) but not with 653B(b) or 653B(c).
- No access to a public road (Ballyogan or Clay Farm Loop Road) for development.
- Section 5 referral to ABP in 2019 (ABP Ref. 305880-19) relating to a fence across a planned roadway. 2020 Determination that the replacement fence was development and was exempted development. It is submitted that the reference to '*and does not obstruct any public right of way*' validates the appellants contention that the road cannot be used as access for development. DLRCC have failed to remove the barrier. The Lawless family have no rights to connect to services in the road and DLRCC is fully aware of this.
- History of DLRCC failure to take-in-charge the part completed loop road.
- Reference to correspondence from DLRCC to ABP dated 9th July 2001 which states inter alia '*without the loop road the development of the zoned lands cannot take place.*'

- Reference to correspondence pertaining to a condition imposing a financial contribution under D00A/1256 (PL.06D.125017).
- DLRCC did not move to take-in-charge the section of the loop road completed by the developer.
- Lawless family and Local Infrastructure Housing Activation Fund (LIHAF) agreement with DLRCC.
- The Lawless family, together with Park Developments Group and McGarrell Reilly Group attempted to unlock the development potential of the lands. A LIHAF was executed on the 31 October 2017 for the completion of the Clay Farm Loop Road (The loop road). The loop road is required to develop the lands surrounding Kilgobbin Cottage, particularly the parcel which is the subject of this appeal.
- DLRCC Notification in 2020 that the matter of TIC of the build section of the Clay Farm Distributor Road has not been achieved and that in the absence of this, the delivery of the Clay Farm LIHAF infrastructure cannot be achieved during the lifetime of the current LIHAF grant agreement. The DLRCC statement that “*The Clay Farm road is accessible without significant works and without third party involvement*” is incorrect.
- Numerous submissions to DLRCC over the years identifying access challenges.
- McGarrell Reilly SHD application (ABP Ref. 314131-22). DLRCC Submission on the file highlights issues with the loop road and third parties.
- Correspondence dated 14 October 2022 from DLRCC refers to ‘*unlocking developable lands.*’

Documentation (13 no. appendices) submitted with the grounds of appeal includes inter alia:

- DLRCC Notification (27 March 2023).
- Correspondence associated with the DLRCC submission.
- Refence map.
- DLRCC RZLT.
- Lawless Family home.
- Copy of ABP 305880 decision regarding replacement fence on loop road.
- Aerial photographs.
- Correspondence dated 2001. ABP decision and Inspectors Report (D00A/1256 (ABP 06D.125017)).
- Executed DLRCC LIHAF Agreement and copy of DLRCC letter dated 24 July 2020.
- Draft BELAP submission (May 2019).
- Draft Development Plan submission (April 2021)
- Extract of DLRCC CEO report on SHD Application.
- DLRCC correspondence dated October 2022 and February 2023.

7.0 Assessment

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 zoned residential and therefore within scope of section 653B(a)(i).

The grounds of appeal set out that the lands should be excluded as the lands include the appellants private residence.

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 also submit the need to provide the Clay Road Loop Road in order to provide access to the appeal lands and in the absence of this road being completed the lands are not accessible. And that the lands cannot be accessed as require third party agreement as DLRCC have not TIC the constructed section of the Clay Farm Loop Road to date.

The planning authority in their assessment refer to correspondence from the DLR Transport department who advised that *"The Clay Road is accessible without significant works and without third party involvement."* The local authority determined the lands to be in scope of section 653B(b) as the land is appropriately zoned lands serviced and does not benefit from exclusion under section 653B of the TCA 1997 as amended.

Pg. 24 of the RZLT guidelines state *"In considering road access, the planning authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road across other landholdings, should be discounted with the exception of local authority owned lands, where use and access are a matter for eh local authority."*

I note the issues and arguments made in the grounds of appeal regarding access via the partially constructed Clay Farm Loop Road which links to the Ballyogan Road to the north and on the basis of the information on file, local authority reports and grounds of appeal I am of the view that it is not reasonable to consider that the lands are accessible via the Clay Farm Loop Road at present. I note that the Kilgobbin Cottage and associated lands are currently accessed via a private lane way off the Kilgobbin Road. This lane appears to serve several residential properties which include inter alia Woodlawn, Meadowbrook (small residential scheme), The Mews, Kilgobbin Villa and other unnamed dwellings/buildings. This lane runs along the western boundary of the land and access via this road would in principle not require significant works but may require third party consents. The suitability of an access would be assessed through any potential application and by the relevant planning authority through the development management process. The purpose of this report is to assess compliance with section 653B of the Taxes Consolidation Act 1997, as amended and does not prejudice any potential application on said lands.

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 or require third party consent to provide same via a private lane. In my opinion it is not reasonable to consider that the land may have access to, or be connected to public infrastructure and on this basis the land does not satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and the grounds of appeal relating to this matter should be upheld.

Having regard to the foregoing I consider that the lands identified as DM22/0002 (Parcel ID DELA00000506) do not 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 DM22/0002 (Parcel ID DELA00000506) is not served by existing road infrastructure and would require the provision of extensive sections of new road to connect to existing provision, and would cross lands in third party ownership or require third party consent, and as such do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as DM22/0002 (Parcel ID DELA00000506) from 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 lands identified as DM22/0002 (Parcel ID DELA00000506 is not served by existing road infrastructure and would require the provision of extensive sections of new road to connect to existing provision, and would cross lands in third party ownership or require third party consent, and as such cannot be considered in-scope for the RZLT.

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

11th September 2023