



An
Bord
Pleanála

Inspector's Report

ABP-316623-23

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 Lehaunstown, Cabinteely, Dublin 18.
Local Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	DM22/0060.
Appellant(s)	Stark Property Developments Ltd.
Inspector	Daire McDevitt.

1.0 Site Location and Description

The lands identified as DM22/0060 (Parcel ID DELA00000044) refer to lands located along Lehaundtown Lane, Lehaunstown in Cabinteely, Dublin 18. There is a residential dwelling currently on the lands.

2.0 Zoning and other provisions

Under 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.'

Policy Objective CS9- Strategic Developemtn 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.

Lands part Druids Glen DA 5 Cherrywood.

Objective PL14 of the Planning Scheme 'it is an objective to implement the road infrastructure for residential development (including segregated pedestrian/cycle routes) proposed in this Planning Scheme to facilitate access to and within the area of all travel modes.'

Table 7.3 Cherrywood SDZ Planning Scheme

3.0 Planning History

Cherrywood SDZ

Applications pertaining to existing house on the lands.

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 required infrastructural requirements are not in place (Druids Glen Road) and in its absence the lands cannot be developed. Access via Lehaunstown Lane is not acceptable for residential development. PL14 and Table 7.3 of Cherrywood SDZ Planning Scheme set out that the Druids Glen Road is a critical piece of infrastructure that must be in place before development of the subject site.

5.0 Determination by the Local Authority

The local authority determined that:

1. The land is zoned for a mixture of uses, including residential uses and it is reasonable to consider that the land is vacant or idle.
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 lands are, in effect, sterilized from development, given the presence of a planning scheme objective to provide for a new road on part of the site (Druids Glen Road as per Objective PL14 and Table 7.3 of the Cherrywood SDZ Planning Scheme). Stark Property Developments Limited have been engaged with the Council on delivery of the relevant portions of the Druid's Glen Road but this infrastructure has yet to progress beyond design stage. The subject site does not have access to road infrastructure as required under section 653B(b) necessary for dwellings to be developed.

- Furthermore the road proposal referenced is considered to meet the criteria of section 653B(c)(iii)(II) as being lands being required to provide for ‘transport facilities and infrastructure’ and section 653B(c)(iv) as this proposal is also considered to be a statutory designation which preclude development.
- DLR Development Agency Projects Team (DAPT) in their submission acknowledge that ‘the site is not fully serviced’ and is reliant on third parties for the delivery of the road infrastructure.

7.0 Assessment

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 within scope of section 653B(a).

The DLR Determination considered to lands in scope. The appellant submits that the lands do not meet the criteria under Section 653B(b). The grounds of appeal submit that the lands are, in effect, sterilized from development, given the presence of a planning scheme objective to provide for a new road on part of the site (Druids Glen Road as per Objective PL14 and Table 7.3 of the Cherrywood SDZ Planning Scheme). Stark Property Developments Limited have been engaged with the Council on delivery of the relevant portions of the Druid's Glen Road but this infrastructure has yet to progress beyond design stage. As such it is submitted that the appeal lands do not have access to road infrastructure as required under section 653B(b) necessary for dwellings to be developed.

The lands in question are part of the Cherrywood SDZ and the planning scheme indicates that the Druids Glen Road P-Q3 must be commenced prior to the occupation of 40% of DA5 (growth area) and completed to a standard to be taken in charge prior to the occupation of 65% of DA5. Access to the appeal lands via the Druids Glen Road is via lands in third party control, where permission for SHD has been the subject of judicial review proceedings. The delivery of the Druids Glen Road is on third lands outside the appellant's control.

I note that both the appellants in the grounds of appeal and the local authority in their assessment refers to comments from the DAPT. There is no copy of a report/submission on file from the DAPT, the response summarised on page 2 of the local authority's report/assessment.

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/scheme on said lands.

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 the local authority.” In this instance the lands located along Lehaunstown Lane require construction of a section of the ‘Druids’ Glen Road’ which is dependent on third party delivery through adjoining lands, in this regard access was not in place on the relevant dates or on the date DLR made its Determination.

Section 4.1.1(iii) of the RZLT Guidelines relates to ‘Services to be considered’. Under this section it is stated that “*This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope.* The appeal lands are at present accessed via Lehaunstown Lane, a narrow road which serves numerous residences. For the purposes Of RZLT the criteria is ‘reasonable to consider’ and in this instance the lands are directly accessed off a public road (Lehaunstown Lane).

Under Section 4.1.1(iii) it is stated that “*In appraising whether suitably zoned lands are connected, or able to be connected to services this assessment must consider the following infrastructure categories:*

Road access

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 access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority.

Where provision has been made, but not yet constructed for road and pathway access through Local Authority consenting processes, then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.

At the current time this project identified as N11 Druid's Glen Road (P* to P3) Phase 2 is at tender stage (Council's Capital Programme).

I would consider that based on the provision of Section 653B(b) and the recommendation of the RZLT guidelines under section 4.1.1(iii), that it is reasonable to consider the lands in question may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed.

The grounds of appeal submit that the road proposal referenced is considered to meet the criteria of section 653B(c)(iii)(II) as being lands being required to provide for 'transport facilities and infrastructure' and therefore should be excluded

653B(c)(iii) that is reasonable to consider if required for or integral to, occupation by (II) transport facilities and infrastructure). In this instance works required to provide the Druids Glen Road is outside the appeal lands, and the grounds of appeal relating to this matter should be dismissed.

The grounds of appeal submit that the road proposal referenced is considered to meet the criteria of section 653B(c)(iv) as this proposal is also considered to be a statutory designation which preclude development. In this instance the requirement to provide the road refers to an objective within an approved SDZ scheme and is not a statutory designation, and the grounds of appeal relating to this matter should be dismissed.

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 DM22/0060 (Parcel ID DELA00000044) 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 DM22/0060 (Parcel ID DELA00000044) 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 zoning objective that applies to these lands.

The lands identified as DM22/0060 (Parcel ID DELA00000044) 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 DM22/0060 (Parcel ID DELA00000044) 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 DM22/0060 (Parcel ID DELA00000044) 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 DM22/0060 (Parcel ID DELA00000044) 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