



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316629-23

---

<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
<b>Location</b>	Lands at: Stocking Avenue (known as Pines East), Rathfarnham, Dublin 16.
<b>Local Authority</b>	South Dublin County Council
<b>Local Authority Reg. Ref.</b>	SD-C259-17
<b>Appellant(s)</b>	Ardstone Partners ICAV
<b>Inspector</b>	Frank O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site is located on the northern side of Stocking Avenue, c. 3.4 km to the south-west of the centre of Rathfarnham Village, on the southern side of the M50 Motorway and is known as White Pines East. The site falls steadily in a general north-west direction from the south-east. The site has an estimated site area of c. 3.1 hectares. There is established residential development to the immediate west and south-east of the site.
- 1.2. It should be noted that there is 1 no. separate concurrent RZLT Appeal relating to lands to the south of the subject site on the southern side of Stocking Avenue, as follows:
  - Local Authority Ref. SD-C259 - 18 and An Bord Pleanála Case Ref. No. VY06S.316640, relating to lands on the opposite side/ south of Stocking Avenue. Appellant: Ardstone Partners ICAV.

## 2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'Objective RES-N' in the South County Dublin Development Plan, 2022 to 2028. The relevant zoning objective is *'to provide for new residential communities in accordance with approved area plans'*. Residential is a use which is permitted in principle on lands zoned Objective RES-N.
- 2.2. An indicative road route is shown to traverse the northern portion of the site from east to west. This indicative road is shown to connect the existing adjacent residential development to the west with the existing residential development to the south-east of the subject site.

The following text applicant to the said indicative road link:

- Name: Ballycullen-Oldcourt Street Network
- Description: Various streets within the Ballycullen-Oldcourt LAP lands.
- Function: Formation of a strategic street network providing access throughout the site.

- 2.3. There is a specific local objective QDP14/SLO3 shown on the Land Use Zoning Map to the immediate south of the subject lands. The relevant text for same reads as follows: *‘That the provisions of the Ballycullen - Oldcourt Local Area Plan (2014) as extended, in respect of the steep topography in the lands zoned RES-N between Stocking Lane, Ballycullen Road and the M50 (Map 10) remain in force during the lifetime of this Plan having regard to ministerial guidelines.’*

### 3.0 Planning History

- 3.1. Relevant Recent Planning History for the subject site
- 3.2. SHD3ABP-309836-21: Strategic Housing Development (SHD) Application. Applicant: Ardstone Homes Limited. Permission for 241 no. apartments and associated site works. Permission was GRANTED by An Bord Pleanála on 19/07/2021 subject to 28 no. conditions. **This decision is the subject of a current Judicial Review (see High Court 2021 No. 810 JR).**

### 4.0 Submission to the Local Authority

- 4.1. The Appellants made a submission to the Local Authority seeking to have their land removed from the draft map.
- 4.2. The submission request that the lands be excluded from the final map.
- 4.3. The site will soon be developed for residential development. The Appellants consider that they are restrained from implementing a planning permission for that purpose. Specifically, legal proceedings that question the validity of the permission have been commenced and are not yet determined.
- 4.4. It is stated in the submission that the ZLT Act recognises that owners might be prevented from carrying out residential development by appeals to the Board against a decision to grant permission by the Council, or by legal challenge to a permission granted by the Council or the Board: Section 653AF of the ZLT Act.
- 4.5. The Appellants read the ZLT Act to allow the owner to either:
- a) Pay the tax in full and, if the permission survives appeal or legal challenge, get repayment of the tax paid.

- b) Defer the tax, but, if the permission does not survive appeal or legal challenge, pay the deferred tax with interest; or;
  - c) Sell the lands before the appeal or legal challenge is determined, but must pay the tax and interest in full.
- 4.6. The Appellants state that they do not believe that fairly reflects their property rights, or recognises the ease with which legal challenge is commenced, and the frequency those challenges are successful for reasons beyond their control. For this reason, it is stated in the submission that they must insist that the site be excluded from the plan because it is impossible to activate the lands for residential development by reason of legal challenge affecting the property.

## 5.0 Determination by the Local Authority

- 5.1. Local Authority Decision: To retain Land Parcel SDLA00026706 on the map.
- 5.2. It has been determined that Land Parcel SDLA00026706 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:

- The owner of the site 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.
- Pending Legal Challenge: The Appellants state that the site will soon be developed for residential development, but they are restrained from implementing a planning permission for that purpose, (see High Court 2021, No. 810 JR).
- The Appellants read the ZLT Act to allow the owner to either:
  - Pay the tax in full and, if the permission survives appeal or legal challenge, get repayment of the tax paid.
  - Defer the tax, but, if the permission does not survive appeal or legal challenge, pay the deferred tax with interest; or;
  - Sell the lands before the appeal or legal challenge is determined, but must pay the tax and interest in full.
- The Appellants state that they do not believe that fairly reflects their property rights or recognises the ease with which legal challenge is commenced, and the frequency those challenges are successful for reasons beyond their control. For this reason, it is stated that they must insist that the site be excluded from the plan because it is impossible to activate the lands for residential development by reason of legal challenge affecting the property.
- The Appellants state that the Council rejected this argument, suggesting it is a matter for the Revenue Commissioners. The Appellants disagree with that approach. It is stated that their request is for the Board to respect their property

rights, by protecting them from unjust attack where, through no fault of their own, they are prevented from delivering residential development.

- The Appellants state that in their view the ZLT Act does not properly reflect their rights. The Appellants consider that the Board is obliged to do more than listed within Section 653B and ensure protection by excluding the lands, where a permission is granted but subject to a pending legal challenge.
- The Appellants state that for these reasons, the Board is requested to set aside the determination of the Council and allow the appeal under Section 653J(5) (ii).
- Finally, the Appellant states that if the Board requires further information, under section 653J(3)(c) of the ZLT Act, it is requested to inform them.

## **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-C259-17 (Land Parcel SDAL00026706), 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.

---

Frank O'Donnell

Planning Inspector  
28<sup>th</sup> July 2023