



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316630-23

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**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**

Brighton Road, Foxrock, Dublin 18

**Planning Authority**

Dun Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

DM22/0068

**Appellant(s)**

The Brighton Road Partnership

**Inspector**

Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The site is situated to the west of Brighton Road. The site extends from the road in the form of a narrow strip, before widening out into greenfield area situated to the back of residential properties fronting onto Brighton Road. The area is characterised by residential estates.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned under the Dún Laoghaire Rathdown Development Plan 2022-2028 'Objective A' 'To provide residential development and improve residential amenity while protecting the exiting residential amenities.'

The site is also partially within the Foxrock Architectural Conservation Area.

## 3.0 Planning History

- 3.1. D21A/0051 / ABP-311671-21: Permission GRANTED for demolition of existing non-habitable outbuilding and construction of a part four to five storey apartment block over basement comprising 37 no. apartments, and ancillary works. 19/05/2022
- 3.2. D18A/0846 / ABP-303768-19: Permission REFUSED for 52 no. units comprising 14no. houses and 38no. apartments. Reasons for refusal relates to deficiencies in existing foul sewerage system serving the site and design/overbearing impact. 19/10/2019
- 3.3. D15A/0719: Permission REFUSED for development of 6no. detached two storey dwellings. Refused for two reasons relating to density and mix of dwellings. 19/01/2016

## 4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. It stated that:
  - While planning permission was granted under ABP-311671-21 in May 2022, it was refused under ABP-303768-19 due to deficiencies in the existing foul sewerage system. The grant of permission in 2022 was subject to access to

an alternative wastewater connection other than off Brighton Road. This is yet to be confirmed. While the updated application was in the system as of 1<sup>st</sup> January 2022, there was no further knowledge or certainty around the wastewater service requirement. At that point in time the land was not serviced.

- The site requires a proposed new gravity sewer which must cross over a water main which is generally against Irish Water's code of practise, and this foul pipe requires consents from third party landowners to be delivered.

## 5.0 Determination by the Local Authority

5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- UE confirm that the site is serviceable for water networks and there is a watermain in close proximity (less than 10m) at the site boundary to the east. In relation to wastewater, the site is not directly serviced. The site is constrained with regard to sewer network and connection not the nearest sewer is not possible. The Brighton Road sewer has no available capacity. It might be feasible to connect to the Carrickmines Sewer approximately 450m south of the site.
- DLR Drainage Planning, Municipal Services, state that there is a capacity issue in the area and therefore the site does not meet the requirement for 'sufficient service capacity available'.
- Where wastewater infrastructure is concerned, it is sufficient that lands are 'able to connect' to services to meet the criteria, so long as sufficient treatment capacity exists. Under the heading of 'Serviced Land Definition' page 8 of the Guidelines, a further distinction is drawn between the need for local network upgrades and capacity in wastewater treatment plants.
- Whilst the comments from UE and DLR Municipal Services are noted, and notwithstanding the points raised by the submitter regarding the foul sewer, it is noted that An Bord Pleanála's planning inspector considered the foul drainage strategy to be acceptable. The application was lodged with DLRCC

on 25<sup>th</sup> August 2021, and therefore the foul drainage strategy would have been achievable on 1<sup>st</sup> January 2022.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- On 1<sup>st</sup> January 2022, the lands at Brighton Road which are subject to this Appeal were not connected/were not able to be connected to the Wastewater Network.
- The development of the lands is dependent upon the facilitation of access to lands in third party ownership to enable connection to wastewater infrastructure.
- Not clear why a decision has been taken to keep the subject lands within scope of RZLT when both Uisce Éireann and the Water and Drainage Department of DLR both acknowledge that the lands are still not serviced in 2023.
- While an alternative design option to connect to the Wastewater Network has been identified, namely to outfall by gravity through third party Leopardstown Racecourse lands, it ultimately requires the applicant to acquire rights to access lands in the ownership of a third party. Horse Racing Ireland consented to the inclusion of lands (and not the carrying out of works) in the planning application.

## 7.0 Assessment

- 7.1. Section 653B(b) of the Taxes Consolidation Act 1997 as amended, requires that for a land to be considered in scope for inclusion for the RZLT maps, it is reasonable to consider that it may have access, or be connected to public infrastructure and facilities, including foul sewer drainage.
- 7.2. The Local Authority determination states that while the comments from UE and DLR Municipal Services are noted, reference is made to application Reg. Ref. D21A/0051 / ABP-311671-21 (granted) which was lodged with DLRCC on 25<sup>th</sup> August 2021, and therefore the foul drainage strategy, (in the view of the Local Authority) would have

been achievable on 1<sup>st</sup> January 2022. I note that the RZLT Guidelines are clear that planning permission is not a relevant matter in considering lands in-scope for the RZLT map (section 3.2.3). While it is possible for individual planning applications to propose network connection solutions in discussion with UÉ, this is distinct from the RZLT criteria.

- 7.3. Section 653B, of the Taxes Consolidation Act 1997 as amended, states that for lands to be included on the map:

*“(b) it is reasonable to consider 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 and with sufficient service capacity available for such development.”*

- 7.4. UÉ have confirmed that with respect to wastewater, the subject site is not directly serviced, and the Brighton Road sewer has no available capacity. The appellant acknowledges that while an alternative solution was proposed in their planning application that was approved in 2022, this requires access over third party lands.

- 7.5. The RZLT Guidelines state on page 25 with respect to foul sewerage drainage that:

*“Consideration of connections which would require more significant works should take into account whether the land required to deliver the works is in the control of the applicant or the local authority, as set out above.”*

- 7.6. The preceding text in the guidelines clarifies that connection to services that require access to 3<sup>rd</sup> party lands may be considered out of scope.

- 7.7. As such, the site is not currently serviced with respect to foul sewer drainage and ease of availability of connection has not been demonstrated.

## 8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

## 9.0 Reasons and Considerations

- 9.1. 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 Section 4.1.1 (iii) of the RZLT Guidelines; it is not reasonable to consider that the subject site may have access, or be connected to, the foul sewer drainage network. As such the site cannot be considered in-scope for the RZLT.

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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Rachel Gleave O'Connor  
Senior Planning Inspector

31 August 2023