



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316645-23

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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**

Lands at St. Teresa's, Temple Hill, Monkstown, Blackrock, Co. Dublin.

**Local Authority**

Dun Laoghaire Rathdown County Council.

**Planning Authority Reg. Ref.**

DM22/0048.

**Appellant(s)**

Oval Target Limited.

**Inspector**

Daire McDevitt.

## 1.0 Site Location and Description

The lands identified as DM22/0048 (Parcel ID DELA00002005) refer to lands at St. Teresa's, Temple Hill, Monkstown/Blackrock, Co. Dublin. The lands are located along and bounded to the north east by Temple Road. Saint Vicent's Park housing estates is to the south east and Rockfield Park to the south with The Alzheimer Society of Ireland facility to the west. There are a number of structures on site, including a number of protected structures: St. Teesa's House RPS398, St. Teresa's Lodge (RPS 1960) and Entrance Gates (RPS 398).

## 2.0 Zoning and other provisions

Blackrock Local area Plan 2015 (extended to March 2025)

Chapter 3 of the LAP deals with Urban Structure and Character and section 3.5.1 in particular provides a 'Site Framework Strategy: St. Teresa's and Dunardagh'. There are a number of specific objectives i.e. DS5-DS17 and design principles pertaining to the site. The strategy also provides guidance on inter alia height, density and housing mix objectives. Objectives are also described specifically in relation to the protection of heritage features on the site in chapter 2.

*DS6 It is an objective of the Council that any redevelopment of the Dunardagh lands shall provide for the retention of the tree belts including the folly at St. Teresa's identified on Drawing 2, adjacent to the boundary with Rockfield Park. The boundaries of the tree belts in question are shown as indicative and shall be defined in agreement with the Planning Authority. The existing boundary wall shall be removed to facilitate the integration of the tree belts into Rockfield Park. An appropriate low boundary treatment shall be erected between the tree belts and any proposed residential development within the St Teresa's and Dunardagh landholding.*

Dun Laoghaire Rathdown County Development Plan 2022-2028.

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

A portion of the overall lands are zoned 'F' 'to preserve and provide for open within ancillary recreational amenities' (excluded from RZLT).

INST Objective attached to lands.

Policy Objective PH21 Development on Institutional Lands 'it is Policy Objective to retain the open character and/or recreational amenity of land parcels that are in institutional use (such as religious residential or other uses) and are proposed for redevelopment.

Where institutional lands – identified by an 'INST' objective on Development Plan Maps – are proposed to be developed:

- A minimum of 25% of the entire INST land parcel, as determined by the planning authority, will be required to be retained as accessible public open space. In determining the area to which the "INST" objective applies the planning authority shall have regard to the existing and historical land use and associations between land uses, and the extent to which any lands contribute to the open character and setting of the core institutional function.
- This provision must be sufficient to maintain the open character of the site with development proposals structured around existing features and layout, particularly by reference to retention of trees, boundary walls and other features as considered necessary by the Council (refer also to Section 12.3.7.10).
- The provision must be sufficient to maintain and/or improve the recreational value of the site particularly with regard to adding to the sustainable neighbourhood infrastructure of the area.
- Any proposal for development other than that directly related to an existing social infrastructure and/or institutional uses, will require the preparation and submission of a masterplan.
- Average net densities should be in the region of 35 - 50 units p/ha. In certain instances, higher densities may be permitted where it can be demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.

### **3.0 Planning History**

There is extensive planning history associated with the lands.

ABP 303804-19 refers to a 2019 grant of permission for SHD application for 291 residential units and creche. (Block C3 was omitted by condition. This resulted in the scheme reducing from 294 to 291 units).

ABP 312325-21 refers to a 2022 grant of permission for 446 residential units, creche, café and amenity space. This is currently the subject of Judicial Review proceedings.

#### **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 planning policy and land use zoning (request INST designation be removed), unjust to be the subject of tax when lands have a grant of permission which is the subject of third party judicial review proceedings, rationale for tax, land to be incorporated into Rockfield Park by virtue of statutory designation and requirements. INST requirement result in only 75% of land in scope if INST designation not removed

#### **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 INST designation and open space provision. The INST requirement of 25% open space provision should exclude this portion under section 653(c)(iv).

- Rockfield Park and Blackrock LAP 2015. Reference to Design Principle 4 and DS6 which require a significant portion of the site to be subsumed into Rockfield Park. It is submitted that this statutory designation precludes development on this part of the site.
- It is submitted that the imposition of the RZLT on land which are the subject of third party judicial review proceedings and an INST designation is unjust.
- Imposing RZLT on the lands will ultimately increase the development costs within the site and subsequently reduce any affordability intuitive action.

## 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. 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 appellants have submitted that lands should be excluded as they have been attempting to develop the lands with permission granted in 2022 for a SHD is the subject of third party judicial review proceedings. As set out above the role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B. Timelines/delays associated with the planning system and judicial review proceedings which contribute to delays in achieving full planning permission and commencing on site are not included in the criteria set out under section 653B of the Taxes Consolidation Act 1997, as amended., therefore the grounds of appeal relating to this matter should be dismissed. I further note that permission was granted for SHD in 2019 which is not the subject to judicial review proceedings.

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 appellants also submit that the lands should be excluded as an INST objective is attached to the lands which requires 25% open space provision as such only 75% should be liable if this objective stands. The INST Objective does not preclude the development of the lands for the provision of dwellings. Any development on these land needs to have regard to the Development Plan objectives and any layout would be designed accordingly and therefore does not meet with criteria for exclusion under section 653B (c)(iii)(iv) that is subject to a statutory designation that may preclude development as argued by the appellants. Objective INST is not a statutory designation.

The grounds of appeal also submit that the Blackrock LAP 2015 requires that a portion of the site is subsumed into Rockfield Park. I have reviewed the Blackrock LAP 2015 (extended to March 2025) and note the objectives set out there in for the St. Teresas Dunardagh lands. It does not require that a portion of the lands be 'subsumed' into Rockfield Park rather it promotes the retention of the tree belt and removal of boundary to facilitate the integration of the tree belt into Rockfield Park. This would not preclude the overall lands form residential development and having regard to section 653B the lands remain in scope.

The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended

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 and my opinion it is not reasonable to that the land may have access to, or be connected to public infrastructure and on this basis the lands satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Having regard to the foregoing I consider that the lands identified as DM22/0048 (Parcel ID DELA00002005) 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 DM22/0048 (Parcel ID DELA00002005) 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 DM22/0048 (Parcel ID DELA00002005) 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 DM22/0048 (Parcel ID DELA00002005) on the final map.

## **7.0 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 land identified as DM22/0048 (Parcel ID DELA00002005) 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. is portion of the lands identified as DM22/0048 (Parcel ID DELA00002005) 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.*

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Dáire McDevitt

Senior Planning Inspector

15<sup>th</sup> September 2023