



An
Bord
Pleanála

Inspector's Report ABP-316657-23

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 Map
Location	Cornelscourt, Old Bray Road, Dublin 18.
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	DM22/0043
Appellant(s)	Cornel Living Limited
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The site is located at the northern end of Cornelscourt Village, in County Dublin. The site bounds the N11 dual carriageway (Stillorgan Road) and takes access from the Old Bray Road between the AIB bank building and petrol filling station. The remainder of the site bounds the rear of existing housing along the Old Bray Road and Willow Grove.

2.0 Zoning

- 2.1. In the Dun Laoghaire Rathdown County Development Plan 2022 – 2028 the site is governed by zoning objective 'A' - 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'

3.0 Planning History

Subject site

ABP-312132-21 – SHD application granted in 2022 for 419 residential units, creche and associated site works. The appellant has indicated that Judicial Review proceedings are on-going which question the validity of this permission and have not yet been determined by the High Court.

ABP-306225-19 – SHD application refused in 2020 for 468 BTR units, with 274 car parking spaces.

VS-0011/ABP PL06D.301161 – Site confirmed as a vacant site and entered on the vacant site register in 2018.

VX06D.307450 – ABP deregistered the site on 11th May 2021.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority seeking to have the subject lands removed from the RZLT map given that a significant upgrade in terms of foul

sewer drainage is needed in the Foxrock catchment area before any additional residential development is feasible. Separately, legal proceedings questioning the validity of the planning permission on the site have commenced and are not yet determined.

5.0 Determination by the Local Authority

5.1. The Local Authority determined that the site was in scope. The land is zoned solely or primarily for residential use. It is reasonable to consider it has access or can be connected to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development. It is reasonable to consider 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

The following points were made in support of the appeal:

- The site is not, for the purposes of the ZLT Act, serviced land. In terms of foul sewer drainage, a significant upgrade is needed in the Foxrock catchment area by Uisce Éireann before any additional residential development is feasible. The Drainage Section of the Local Authority reports there is currently a capacity issue affecting the site.
- The site should be excluded from the RZLT map because it is impossible to activate the lands for residential development by reason of legal challenge affecting the property.

6.2. Planning Authority Response

- No response on file.

7.0 Assessment

7.1. The comments raised in the appeal submission are noted as is the evaluation report of the Planning Authority which was received by An Bord Pleanála.

7.2. Section 3.2.3 of the Guidelines (Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022) state that: *“Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions.”*

In terms of the delay to development on the land whereby the planning permission is presently the subject of judicial review proceedings as set out by the appellant, this issue does not fall within the criteria for exclusion as set out under section 653B of the Taxes Consolidation Act 1997 as amended. As such, this ground of appeal should be dismissed.

7.3. The grounds of appeal also raise the issue of wastewater infrastructure capacity. Section 653B, of the Taxes Consolidation Act 1997 as amended, states lands to be included on the map should be serviced:

“(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. The Act therefore asks that service capacity is available for development. Page 27 of the RZLT Guidelines expands upon this and sets out a ‘Serviced Land Definition’ on page 8 of the Guidelines, *“...A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.”* The definition also states that *“Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022.”*

7.5. In terms of wastewater infrastructure provision, the Drainage Planning Section of the Local Authority noted that there is a capacity issue in the area and as such it is not the case that there is 'sufficient service capacity available.'

7.6. Section 4.1.1(iii) of the RZLT Guidelines state the following: *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.*

UÉ's report of January 2023 to the Local Authority confirms the foul sewer is located along the Old Bray Road in close proximity to the lands. The report acknowledges it is a constrained area and that 'full development of the site may require on-site storage until network deficiencies are rectified.' I consider the extant SHD application (ABP-312132-21) on the subject lands for 419 no. dwellings is indicative that the land is serviced or has access to services, including wastewater infrastructure necessary for dwellings to be developed. This permission, which is subject to Judicial Review proceedings, involved provision of an on-site foul drainage pumping station.

7.7. It is clear from the information on file that wastewater infrastructure upgrades are required in the area. As set out in the RZLT Guidelines, a need for network upgrades should not exclude lands, where sufficient treatment capacity exists. The UÉ wastewater capacity register indicates available capacity and I note the location of the foul sewer in close proximity to the site.

7.8. As such, I am of the opinion that the land satisfies criterion 653B (b) and that it is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development.

8.0 Recommendation

8.1. I recommend that the board confirm the determination of the Local Authority and that the indicated site be retained on the map.

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 the advice in sections 3.2.3 and 4.1.1 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site (zoned for residential use) is considered in scope for the purposes of the RZLT map.

I confirm that the report represents my professional 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.

John Duffy
Planning Inspector

19th September 2023