



An
Bord
Pleanála

Inspector's Report

ABP-316710-23

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 off Flemington Lane, Balbriggan, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	RZLT067/22
Appellant(s)	Dean Swift Property Holdings Limited Company
Inspector	Rachel Gleave O'Connor

Contents

1.0 Site Location and Description	3
2.0 Zoning and other provisions	3
3.0 Planning History.....	3
4.0 Submission to the Local Authority.....	5
5.0 Determination by the Local Authority	6
6.0 The Appeal	7
7.0 Planning Authority Response.....	7
8.0 Assessment.....	8
9.0 Recommendation.....	9
10.0 Reasons and Considerations	9

1.0 Site Location and Description

- 1.1. The site is located to the south of Flemington Lane, west of Flemington Park and north and west of the Hastings residential estate and south west of the Taylor residential estate, with connection to Taylor Hill Boulevard. The site bounds one-off housing fronting Flemington Lane to the north, residential estates to the east and agricultural lands to the west and south. The site extends to the R122 to the south.

2.0 Zoning and other provisions

- 2.1. The site is zoned RA – Residential Area, there is a specific objective in relation to a Road Proposal running north-south through the site, and the site is within the defined Development Boundary for Balbriggan under the Fingal County Development Plan 2023-2029. The zoning map also identifies the location of approximately 7 ‘Sites and Monuments Record’ with respect to archaeology. The site was previously zoned RA – Residential Area under the Fingal County Development Plan 2017-2023 which was the plan in force at the time the Local Authority determined that the site was in scope for the RZLT Maps, and included a Specific Objective MP 4.B requiring a masterplan over a wider site area included the subject site.

3.0 Planning History

- 3.1. ABP SHD Pre-Application Reg. Ref. ABP-308475-20 for proposed Strategic Housing Development comprising of a total of 582 no. dwelling units, consisting of 444 no. houses. Opinion issued stating that further consideration and amendment required. 15th January 2021.
- 3.2. Partly overlapping isolated areas to the south of the site – Reg. Ref. F17A/0372 Appeal Reg. Ref. ABP-249267, for alterations to previously approved residential development (planning register reference number F07A/1249, An Bord Pleanála appeal reference number PL 06F.231457) consisting of the omission of the following sections of the previously approved residential development: “Flemington Village” (superceded by planning register reference numbers F13A/0240 and F15A/0437), “Naul Park” (superceded by planning register reference number F15A/0550), “River Court” and “Hampton Court” (superceded by planning register reference number

F15A/0242, approval for development of Saint George's National School and Coláiste Ghlór na Mara Secondary School). The omission of the above sectors of development results in an altered permission comprising only Phase 1 public open space to the north-west (as amended by planning register reference number F15A/0550), "Boulevard" Road, and the "Ladywell Avenue" sector of development located in the southwest corner of the site, which comprises a total of 233 number dwelling units, consisting of 89 number houses and 144 number apartments, landscaped public open space including public park (as amended under planning register reference number F15A/0550), piped and other services, roads and footpaths, refuse storage, Electricity Supply Board substations, landscaping and boundary treatments and all associated site development works. Works also include construction of the partially completed "Boulevard" Road running from the intersection with the proposed C Ring Road south to the Naul Road. REFUSED for one reason relating to the design and layout of the proposed development, particularly in relation to pedestrian and cyclist permeability, roads infrastructure and the quality of the open spaces, which failed to adequately meet the more recent residential development standards. 16th April 2018.

3.3. Overlapping site, but not exactly the same site extent - Reg. Ref. F08A/1329 a ten year planning permission to construct a development incorporating 532 no. dwellings, the Balbriggan C-Ring Road and boulevard, a major regional Class 1 public park and an urban square/civic space. GRANTED 14th September 2009. Note Reg. Ref. F08A/1329/E1 approved extension of planning consent until 25th February 2025. Condition no.5 requires agreement with the Planning Authority on transport details, and agreement has not been secured to date.

3.4. Adjacent Sites:

3.5. Lands to the west partly fronting Flemington Lane Reg. Ref. ABP-314446-22 SHD for 127 units. Permission REFUSED due to the absence of adequate pedestrian and bicycle infrastructure (on Flemington Lane) connecting the site to Ballbriggan town centre and poor availability of public transport at the location. 20th March 2023.

3.6. Site to the north Reg. Ref. F18A/0137 Permission REFUSED on appeal to An Bord Pleanála Reg. Ref. ABP-301843-18 for 73 units, due to 3no. reasons, firstly relating to lack of a masterplan as required under the Development Plan (MP 4.A); secondly

inefficient density (being 27uph and less than the minimum 30uph set out in guidelines; and lastly with reference to Objective DSM74 of the Development Plan 2017-2023 and the provision of underground storage tanks and storage systems under public open space, as part of a SuDS solution. 21st December 2018.

3.7. Lands to the north east on the corner of Flemington Lane and the R132 Reg. Ref. F18A/0133 [Drogheda Road (north of Bremore Cottages) Bremore, Ballbriggan] Reg. Ref. ABP-301845-18 for 74 units, REFUSED by An Bord Pleanála on appeal for 3no. reasons, firstly relating to lack of a masterplan as required under the Development Plan (MP 4.A); secondly inefficient density (being 27uph and less than the minimum 30uph set out in guidelines; and lastly with reference to Objective DSM74 of the Development Plan 2017-2023 and the provision of underground storage tanks and storage systems under public open space, as part of a SuDS solution. 21st December 2018.

3.8. Lands to the south east and parallel Taylor Hill Boulevard:

- Reg. Ref. F21A/0055 ('Ladywell' within the townlands of Clonard or Folkstown Great, Clogheder & Flemington, Balbriggan, Co. Dublin) Reg. Ref. ABP-312048-21 for 99 units. Decision not yet made.
- Reg. Ref. F22A/0526 – Permission GRANTED for 10 year consent for Phase 3B as well as roads, services and public space relating to the overall Phase 3 Ladywell lands, including 95 no. dwellings, roads and services. 4th May 2023.

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. The submission states that the development may not be served by adequate road infrastructure. There is insufficient capacity within Balbriggan to accommodate additional traffic, with the R122 to the south of the lands under constraint in particular. Secondly, the lands are located within designated North West Balbriggan Masterplan area. This Masterplan has not been completed by the Planning Authority. It is considered that this is a statutory objective, thus the lands may be excluded from the RZLT maps.

- 4.2. The R122 is the dominant route into and out of the town centre, there is existing strain on the road. The road network is in the process of being improved and the lands will in future be served by a C-ring road as well as improved junctions. The delivery of these roads are essential to allow for additional dwellings. The landowner has recently submitted an LRD pre-planning application to the Planning Authority with a view of discussing a proposal for improving the road network and thus capacity.
- 4.3. The lands are not served by adequate water infrastructure to facilitate a scheme on the submission lands.
- 4.4. The Fingal Development Plan 2017-2023 zoning maps illustrate a number of recorded monuments within the submission lands with a holy well located at the northern boundary at Flemington Road. In the past, testing was carried out and revealed a large number of archaeological remains which were deemed to not be of national importance. Development on the site would require an archaeologist to monitor works, and previous consents have included conditions related to the same.
- 4.5. The provision of a Masterplan objective within the Fingal County Development Plan is considered to be a statutory designation which aims to achieve a more structured form of development. The Masterplan designation has also been a deciding factor in planning applications as shown in the planning history.

5.0 Determination by the Local Authority

- 5.1. The local authority consulted with Uisce Éireann, who confirmed that the area is serviceable for water supply. Subject to scale of development, upgrades may be required. Full development of the area will require developer led infrastructure upgrades. In terms of wastewater, Uisce Éireann noted that services are limited however, development of this area is not impeded. Developer provided infrastructure will be required. Subject to scale of development, Uisce Éireann can work with the developer on alternate solutions if required. The Planning Authority Water Services Department confirms that the site is serviceable for water supply and that wastewater services are in close proximity to the lands.
- 5.2. While there are archaeological and historic remains on the lands, it is considered that the site is not affected to a sufficient extent to preclude the provision of

dwellings. In the event of future development on the land; it is likely that monitoring by an archaeologist during construction phase would be required. The lengthy planning history of the lands are detailed in the submission and noted.

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

- The development may not be served by adequate road infrastructure. Insufficient capacity, with the R122 under constraint. Development of the land would lead to intensification of use of road infrastructure. Development of the lands would directly contravene Objective Balbriggan 11 as the roads do not have the capacity to accommodate increased levels of traffic. Further development would without upgrades to the road network result in unsafe, hazardous infrastructure and thus be against the development plan standards.
- The subject lands form an essential component of the landowners agricultural business, comprising fertile, free draining, sandy soils which are ideal for farming. Reference to Our Rural Future Rural Development Policy 2021-2025. Reference to comments made by Minister for Finance that lands being actively used for farming, and not vacant or idle, will not be liable for the tax.
- ‘Further Reasoning’, consider that certain information was not taken into consideration. Reference to the planning history of the site and surrounds.
- The landowner fully intends to develop the submission lands in accordance with the principles of proper planning and sustainable development and in conjunction with the delivery of road infrastructure to serve the scheme.

7.0 Planning Authority Response

7.1. Additional commentary included in the appeal submission stating that the lands form an essential component of the appellants agricultural business are noted. In this regard, and as indicated in the Guidelines, the use of land for agricultural or

horticultural purposes are not considered to be exempted from scope as they are not subject to rates.

- 7.2. In response to the section of the appeal documentation entitled 'Further Reasoning' it should be noted that the Planning Authority considered all relevant planning history in determining the lands to be in scope for the purposes of RZLT, concluding that the lands are appropriately zoned for residential development, are serviced, or it is reasonable to considered may have access to services.

8.0 Assessment

- 8.1. The appeal grounds states that the development of the site is prevented due to inadequate road infrastructure / capacity. There is no evidence submitted by the appellant to demonstrate that this is the case. There is a live planning permission overlapping a similar site extent to the area that is subject to this appeal. Reg. Ref. F08A/1329 a ten year planning permission to construct a development incorporating 532 no. dwellings, the Balbriggan C-Ring Road and boulevard, a major regional Class 1 public park and an urban square/civic space, extended under Reg. Ref. F08A/1329/E1 until 25th February 2025. I note condition no.5 of that consent requiring approval of details relating to transport infrastructure, none of the details requested are overly prohibitive and reflect the normal approach to requiring more technical details at post-planning design construction stage. Indeed, this consent demonstrates that it the site has the ability to connect to services.
- 8.2. I note planning history on the site and surrounding area with respect to refusals with reference to road and pedestrian infrastructure, however the subject lands are large and would require the delivery of infrastructure as part of a development proposition, as illustrated by Reg. Ref. F08A/1329 which includes new roads. While there is no pedestrian infrastructure on Flemington Lane itself, and that has hindered surrounding sites, the subject site extends further to the R122 to the south and connects to existing residential estates to the east (Taylor Hill Boulevard).
- 8.3. Uisce Éireann confirm that development of the lands is not impeded by the ability to connect to water/wastewater services and the wastewater treatment capacity register confirms that there is capacity for Balbriggan.

- 8.4. There is no requirement for a masterplan for the subject site under the current Fingal County Development Plan 2023-2029. While there was a masterplan specific objective relating to the site at the time of the Local Authority's determination, this is not a statutory designation and is not included in the criteria for exclusion as set out under section 653B of the Act.
- 8.5. I note the location of several Sites and Monuments Record on the subject site, however the site has previously been investigated with respect to archaeology and the former application on the site was approved subject to condition requiring archaeological monitoring as sufficient mitigation in this regard, as such, these archaeological features on the site are not precluding development.
- 8.6. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is zoned primarily for residential use, and not for mixed use, and therefore the exemption under part (c)(ii) does not apply. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.

9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

10.0 Reasons and Considerations

- 10.1. 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 section 3.1.2 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site is considered in scope for the purposes of the RZLT map.

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.

Rachel Gleave O'Connor
Senior Planning Inspector

07 July 2023