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Bord  
Pleanála

## Inspector's Report ABP-316771-23.

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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**

Earlsfort, Blackrock. Co Louth

**Local Authority**

Louth County Council.

**Local Authority Reg. Ref.**

LH-C2-RZLT-12

**Appellant**

PJ and EJ Doherty Ltd.

**Inspector**

Stephen J. O'Sullivan

## **1.0 Site Description**

- 1.1. The site comprises 9 hectares of land within the built up area of Blackrock, Co. Louth.

## **2.0 Zoning and other provisions**

- 2.1. The site is zoned for residential use by the Louth County Development Plan 2021-2027 under objective A1 'Existing Residential'.

## **3.0 Planning History**

- 3.1. ABP-308135-20 -the board granted an application for a Strategic Housing Development comprising 257 dwellings in December 2020. Condition 2 required the omission of an apartment block from the scheme and condition 3 required to omission of 25 other dwellings in the interests of orderly development and to avoid premature development arising from flood risk.

## **4.0 Submission to the Local Authority**

- 4.1. The appellant made a submission to the Local Authority seeking to have its lands removed from the draft map on grounds similar to those raised in the current appeal.

## **5.0 Determination by the Local Authority**

- 5.1. The local authority determined that the site was in scope and should remain on the map. The local authority consideration stated that developed residential land remained in scope for the map even though residential properties would not be liable to pay the tax, so the northern parcel of land should remain on the map. A permission for a strategic housing development applies to the remainder of the site. While housing was excluded from part of the site by the conditions of the SHD permission due to flood risk and prematurity, the Finance Act 2021 does not provide a specific exclusion for flood risk so it is not possible to exclude these lands from the map.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site incorrectly includes land occupied by the existing residential estate at Earlsfort and associated areas.
- The remainder of the site is under construction for the Strategic Housing Development granted permission under ABP-308135-20 and it is not reasonable to consider that they are vacant or idle. Only 4.14ha of this land is available for housing, the rest is needed for roads, public open space and ancillary services. 0.93ha is required for open space under the permission, 0.18ha for the Dublin Road cycleway and footpath, 0.12ha for the creche and 1.66ha for internal roads and footpaths.
- The remainder of the site also includes a riparian strip of 0.41ha at the south of the site that is not the suitable provision of housing as it is constrained by the Dundalk and Ardee Flood Relief Scheme, and 0.57ha on which housing was omitted due to prematurity in respect of that scheme prematurity under conditions 2 and 3 of the SHD permission. The fact that the constraints on these lands could or will be alleviated is not the relevant legal test. The appropriate test is whether the effect is to a sufficient extent to preclude the provisions of dwellings. Constraints under section 653B(c) may be capable of resolution subject to time and cost but this will delay the delivery and increase the cost of housing so that a site should be relieved from the burden of this tax. Unreasonable delay should be measured by reference to the duration of a planning permission which is typically 5 years. But 2 years might be lost to defending legal challenges and another year to secure agreement on compliance conditions, so that the useful life would only be 2 years. The protection of the riparian zone is also required under objective NBG4 of the county development plan. It was incorrect for the planning authority not to recognise that the physical condition of the riparian strip and the omission of proposed dwellings under conditions 2 and 3 of the SHD permission precluded the provision of housing on these parts of the site despite their inclusion in the SHD application site.

## 7.0 Assessment

- 7.1. The development and occupation of housing does not provide grounds under section 635B of the act to exclude residential zoned land from the map although it does affect the liability to pay the tax. I agree with the position of the local authority on this issue and therefore recommend that occupied existing areas of the Earlsfort estate be retained on the map. There is no requirement for lands to be vacant or idle for them to be included on the map where they are zoned primarily for residential use, and the fact that part of the land is currently being developed for housing would not exclude it from the criteria for inclusion on the map under section 653B.
- 7.2. Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing including contamination and the presence of known archaeological or historic remains. The local authority are correct to point out that flood risk is not mentioned in this sub-section. However it is not excluded either, and the use of the word “including” would indicate that relevant matters of the site’s physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. However in this case the terms and conditions of the SHD permission on the site excluded the provision of housing from the both the riparian strip and other specific adjoining lands on the basis on flood risk which arises from the physical condition of that part of the site. Therefore I conclude that it would not be reasonable to consider that those lands are not affected in terms of their physical condition to preclude the provision of housing and recommend that those parts of the site be omitted from the map.
- 7.3. The appellant makes a plausible case that the lands that would be occupied by a creche, roads, footpaths, cycleways and public open space after the implementation of the SHD permission on the site should be omitted from the map as it may be that reasonable to consider that they are required for social, transport and recreational infrastructure under section 653B(c)(iii) (I), (II) and (VII) respectively. However I do not recommend that they be omitted from the map. Those elements would be

integral to any housing development and are not considered to be separate or distinct developments from the permitted housing. While the permission identifies the location and extent of the lands that would be occupied by such elements of the permitted housing development, it is common practice that permissions for large scale development such as this are subject to amendments during the course of construction. The exclusion at a granular of relatively small pieces of land that would be occupied by the creche, roads, footpaths, cycleways and public open space level under a particular planning permission would therefore render the maintenance of an operative RZLT map problematic. I therefore recommend that these lands be included on the map. This approach would not prejudice the appellant's position, as the roads, footpaths, cycleways and public open space are not capable of being sold separately for profit and so do not increase the value of the land upon which the tax is calculated, while the permitted creche would fall out of scope when it commences operation either as social infrastructure under section 653B(c)(iii)(I) or as a commercial operation providing services to residents of the adjacent area under section 653B(c)(i).

## **8.0 Recommendation**

- 8.1. I recommend that the board set aside the determination of the local authority in part and direct the local authority to omit the 0.41 hectares of the riparian zone and 0.57 hectares where the conditions of the permission issued by the board under ABP-308135-20 excluded the construction of housing, as set out in the details submitted with the appeal, and to confirm the determination of the local authority in part and direct the local authority to include the remainder of the site on the map.

## **9.0 Reasons and Considerations**

Having regard to the terms and conditions of the permission issued by the board under ABP-308185-20 it would not be reasonable to conclude that the physical condition of the riparian zone and other lands on which housing was excluded did not preclude the provision of housing there. In relation to the remainder of the site, the ongoing implementation of that permission does not establish grounds under

section 653B of the Taxes Consolidation Act 1997, as amended, to exclude from the map that land which is zoned solely or primarily for residential use.

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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Stephen J. O'Sullivan  
Planning Inspector

19<sup>th</sup> May 2023