



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316927-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Lands to the east of Enniskerry Road, Co. Dublin (coordinates ITM 720254, 722992)
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	DM22/0080
<b>Appellant(s)</b>	Keith Start
<b>Inspector</b>	Rachel Gleave O'Connor

## **1.0 Site Location and Description**

1.1. The subject site is situated to the east of Enniskerry Road and opposite Kiltiernan Church and Kiltiernan Church of Ireland National School. Residential estates are situated to further to the west and south of the site, whilst lands to the north are agricultural/greenfield in character. One-off housing is also situated proximate to the site.

## **2.0 Zoning and other provisions**

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

2.2. The site is also within the boundary of the Kiltiernan – Glenamuck Local Area Plan extended to September 2023.

2.3. A transport objective is also included on the zoning map, to the western edge of the site as it aligns with Enniskerry Road: '6 Year Road Objectives/Traffic Management/Active Travel Upgrades' 'Enniskerry Road (Stepaside to Glenamuck District Distributor Road)'. Table 5.3 of the Development Plan outlines that this transport objective concerns upgrades to be delivered by the Local Authority.

## **3.0 Planning History**

3.1. Strategic Housing Development Application Reg. Ref. 312214-21 (which the subject site forms apart of, extended to a wider area) GRANTED 11<sup>th</sup> April 2022 for 130 residential units.

## **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:

- The land forms part of the Kiltiernan/Glenamuck Local Area Plan (LAP). The LAP and County Development Plan specifically required transport infrastructure necessary to support the quantity of residential development

envisaged under the LAP. DLRCC have stated that the necessary infrastructure needs to be constructed before further development in the area.

- Reference to section 8.2 of the Inspectors report for (ABP-312214-21). *[NB relates to the Planning Authority submission on the application, stating that the development would be premature by references to deficiencies in the road network].*
- The lands do not enjoy any independent or permissible access to the adjoining public road infrastructure. While some land adjoins the public road, there is no permissible or safe access point due to rising inclines and curving nature of the public road adjoining.
- Notwithstanding the request to remove all land, also refer to planning permission 312214-21, with lands identified for use as green space or transport infrastructure, and therefore cannot be used for dwellings. This land can not be reasonably included as per criteria 653B(c) and in particular subsections ii, iii, vi and vii.

## 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:

- Notwithstanding the comments made by DLR Transport Planning during the SHD process it is noted that the lands now benefit from a grant of planning permission.
- The SHD development permitted under ABP-312214-21 has demonstrated that there is a solution for the development of the subject lands and they are, therefore, connected or able to connect to public services.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- DLRCC did not give due regard to the criteria set out in Section 653B of the legislation. In particular DLRCC has not fully considered the substantive point

i.e. that currently there is insufficient road infrastructure in the form of the GDDR, as specified in the Kiltiernan LAP, required for the appropriate development of dwellings.

- Essential and necessary road infrastructure was not constructed on 1/1/22, nor had construction even begun.
- It is acknowledged that ABP has given permission to a 3<sup>rd</sup> party to develop dwellings on the site, however that decision was made by ABP in the belief that the GDDD will be constructed in coming years.
- DLRCC have inappropriately given significant weight in their evaluation of the submission to the planning status of the land. The Guidelines sets out in section 3.2.3 that matters which are unrelated to the criteria identified in section 653B such as planning permission should not be taken into account.
- Lack of independent access. In evaluating road access (connection) DLRCC refer to the development solution demonstrated in ABP 312214-21, which shows access across third party lands.
- The development solution apparent in the permission granted is the solution controlled by the SHD applicant, not the landowner of the subject site.

## 7.0 Assessment

7.1. The site is zoned for residential use. There is also a transport objective applicable to the western edge of the site as it aligns with Enniskerry Road for Local Authority upgrades as part of the Glenamuck District Distributor Road (GDDR) 'Enniskerry Road (Stepaside to Glenamuck District Distributor Road)'. The Councils website confirms that the current status of this project is 'At tender'. The RZLT Guidelines state that:

*“Road access: In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority. **Where provision has been made, but not yet constructed for road and pathway access through Local Authority***

***consenting processes, then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.***” (Page 24. My emphasis).

- 7.2. The grounds of appeal state that the lands should not be considered in scope for the RZLT until the GDDR is constructed (and reference is made to Council comments on a previous SHD application on the site in this regard).
- 7.3. In the current condition, the subject site is situated on the Enniskerry Road, with frontage extending along this route. In the appellants submission to the Local Authority, they referred to difficulty in achieving access to the subject site, due to rising inclines and curving nature of the public road adjoining. It is within the normal parameters of any development proposition that it includes the creation of safe vehicular and pedestrian access, and there is no physical constraint exhibited by the subject site that would prevent the achievement of this within the landowner extent in my opinion.
- 7.4. In relation to wastewater infrastructure, with reference to Uisce Éireann’s capacity register, there is capacity at both Shanganagh and Ringsend WWTPs.
- 7.5. While I note the appellants comments with respect to the need to deliver the GDDR scheme prior to development of the site, the zoning of the site does not preclude development in the absence of the construction of this scheme. The GDDR is also at tender stage and therefore can be taken into account when considering lands in-scope with reference to the extract from the RZLT guidelines above.
- 7.6. However, there are parts of the site that overlap the GDDR scheme, and these areas should be excluded in accordance with the provisions under Section 653B(c)(iii)(II) of the Taxes and Consolidation Act 1997 as amended, with respect to the provision of transport facilities and infrastructure.
- 7.7. 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). I also note the appellants grounds of appeal point out that the access under the approved SHD on the site (section 3 above refers) onto Enniskerry Road is via third party lands and outside of the landowners extent, or the extent of the subject site referred to in this appeal. My assessment is based upon the subject site alone and does not rely upon

the previous SHD consent which included the subject site as part of a wider development parcel.

- 7.8. The subject site has frontage to Enniskerry Road which will facilitate access to necessary infrastructure via this road which is in public control and includes connection to the pedestrian network. As such, the site is in-scope for inclusion on the RZLT map.

## 8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority in part and direct the local authority to include the site on the map, with the exception of those parts that overlap the GDDR scheme.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of 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, with the exception of those parts of the site that overlap the Glenamuck District Distributor Road Scheme with reference to Section 653B(c)(iii)(II) of the Taxes and Consolidation Act 1997 as amended.

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

25 August 2023