



An
Bord
Pleanála

Inspector's Report

ABP-316934-23

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 adjoining Shaldon Grange (A protected structure)
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	DM22/0079
Appellant(s)	The Late Peter Start
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The subject site is situated to the east of Enniskerry Road, north west of Glenamuck Road. The subject site is currently occupied by a dwelling and outbuildings. The surrounding areas are characterised by agricultural/greenfield lands and one-off housing. Residential estates appear to the west.

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 2013 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) GRANTED 11th April 2022 for 130 residential units.
- 3.2. Strategic Housing Development Application Reg. Ref. 307506-20 (which the subject site forms apart of) REFUSED on 22nd October 2020 for 130 residential units. Refused for one reason relating to the material contravention of the Kiltiernan – Glenamuck Local Area Plan 2013 (2023) (in terms of phasing plan, which allows for 700 units for Phase 1) and that the statutory requirements relation to public notices and a Material Contravention Statement had not been complied with.

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 LAP and County Development Plan, specify the required transport infrastructure necessary to support the quantity of residential development envisaged under the LAP (section 10.6).
- Reference to comments at section 8.2 of the ABP planning inspectors report (ABP-312214-21) which refers to the response from the Local Authority to the SHD application and relates to deficiencies in the road network.
- The narrow strip of land (area marked E on submitted map) has been designated as a pedestrian greenway by DLRCC (see ABP-312214-21). Therefore not possible to be used for residential development, and also too narrow for dwelling provision.
- Culverting has been prohibited and development cannot be located on land immediately bordering the stream indicated on the drawing enclosed (reference to RZLT Criteria 653B(c) and section 653B(c)iii).
- The recently granted permission ABP-312214-21 was required to indicate that the 4 apartment blocks adjoining GDDR could only be constructed in a later phase of the development following completion of the GDDR road. The construction of the GDDR requires a temporary wayleave and reservation. This has been fenced off and is now under the control of DLRCC. This land will only meet the relevant criteria when it is returned to the estate/owner following completion of the GDDR. Therefore should be excluded.
- The green areas of the approved planning application ABP-312214-21 designates a New Park and the surrounding green-space of area C should be omitted from Draft Map on basis that these have now been designated as public recreational space. Also contains attenuation tanks. Should be excluded with reference to section 653B(c)iii-vii.

- Land designated for taking-in-charge should be excluded as cannot be used for the construction of dwellings. There is precedence for this exclusion for other developments on the Draft Map i.e. Rockville.
- The land identified as area D on the enclosed map is dependent upon completion of either Heronvale Development site or the Victoria Homes (Dwyer & Nolan) sites to enable access for residential units or development. Therefore there is no current access and it should be excluded.
- The land designated as A on the enclosed map encompasses Shaldon Grange House, a designate Protected Structure and its Curtilage. It is subject to a statutory designation that may preclude development (reference to section 653B(c)(iv)).

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.
- With regard to the point raised about the exclusion area around the GDDR, which the submitter states has been fenced off and is currently under the control of the planning authority, reference to the RZLT Guidelines and 'temporary uses' which states that lands which are subject to a temporary planning permission which has been commenced should be considered for exclusion. Therefore, area termed '6.2T' on Drawing no.DP001 of the DLRCC Compulsory Purchase (Glenamuck District Roads Scheme) Order 2019 should be excluded.
- With regard to the area bordering the stream, the RZLT is a self-assessable tax with each landowner responsible for the valuation of their own property. Any valuation will consider the development potential of the lands and have regard to constraints.

- The area designated as open space/pedestrian access and lands to be taken in charge in planning permission were not constructed and in use on 1st January 2022 and therefore cannot be excluded. In addition, there is potential for amendments to the planning permission.
- It is understood that vehicular access is proposed from Enniskerry Road (via the existing access for Shaldon Lodge to be upgraded). It is not considered that adjoining sites must be completed prior to the development of the subject lands as access can presumably be obtained from the main proposed entrance, albeit that may be convoluted.
- With regard to the protected structure, this can only be scoped out through the development management process.
- Recommended Determination 1: Exclude the land termed '6.2T' on drawing no.DP001 of the DLRCC Compulsory Purchase (Glenamuck District Roads Scheme) Order 2019 from the final map.
- Recommended Determination 2: Include the balance of the subject lands at Shaldon Grange, Kiltarnan on the final map.

6.0 The Appeal

6.1. Grounds of Appeal

- The submission lodged to DLR contained 8 separate requests for exclusion. The response from DLR contained a single determination, rejecting all 8 requests (bar a partial exclusion) with insufficient reasoning provided.
- With respect to land parcel marked D on the original submission to the Local Authority.
 - The land identified as area D on the enclosed map is dependent upon completion of either Heronvale Development site or the Victoria Homes (Dwyer & Nolan) sites to enable access for residential units or development. Therefore there is no current access and it should be excluded.

- DLR created a precedent for exclusion of land adjoining Shaldon Lodge on the basis of inadequate water and wastewater infrastructure and separately on the basis of inadequate road infrastructure, within the same RZLT land parcel as the subject site.
- With respect to Shaldon Grange House (a Protected Structure) and adjoining Curtilage.
 - The land designated as A on the enclosed map encompasses Shaldon Grange House, a designate Protected Structure and its Curtilage. It is subject to a statutory designation that may preclude development (reference to section 653B(c)(iv).
 - As the criteria includes a subjective element with the word ‘may’ a low threshold is required to demonstrate its applicability. Shaldon Grange House and its Curtilage (a protected structure) are subject to a ‘Statutory Designation’ which ‘may preclude development’. Reference to DLR Architectural Heritage Protection Guidelines which state that ‘any development that would materially affect the character of a protected structure or a proposed protected structure may be refused without attracting compensation.’
- With respect to areas A-E on enclosed map.
 - Currently insufficient road capacity to accommodate new dwellings on the lands, specifically in the form of the GDDR. The lands are not in scope until the GDDR is constructed.
 - Acknowledge the ABP permission, however that was made in the reasonable belief that the GDDR will be constructed in the coming years. That planning decision and consideration relating was made in the context of relevant planning legislation which is entirely distinct from the evaluation process required in the context of the RZLT legislation.
 - DLRCC have inappropriately given significant weight to the planning status of a sub-area of the lands. The RZLT Guidelines state that

matters unrelated to the criteria, including planning permission, should not be taken into account.

- Area B marked on the enclosed map was (self) conditioned in the SHD application and construction of dwellings in area B cannot occur until after the GDDR is constructed.

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). The site is made up of a single landholding which has been labelled as parcel's A-E in the appellants submission, however these parcels adjoin each other.

7.3. In the current condition, parcel's B and C front onto Enniskerry Road (which has footpaths and facilitates connection to water/wastewater, public lighting etc. infrastructure), and therefore can be considered to have ease of connection to road, pedestrian, and other relevant infrastructure. In addition, with reference to Uisce Éireann's capacity register, there is capacity at both Shanganagh and Ringsend

WWTPs. Land parcels A and D connect directly to C and B, and therefore connection to Enniskerry Road can be achieved for parcels A and D via lands within the same land ownership. Each RZLT application is determined based upon its own merits, and I am therefore unable to specifically comment on the examples raised by the appellant that resulted in exclusions from the map, but the decisive factor for the current subject site is that the landownership extends to the public road which facilitates infrastructure connection. The subdivision of the site into parcels A to E is arbitrary in that sense.

- 7.4. 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.
- 7.5. While there are parts of the site that overlap the GDDR scheme, the Local Authority have already scoped these parts out from the RZLT map. This is 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.
- 7.6. The appeal grounds state that the Local Authority placed too much emphasis upon the approved SHD application that encompasses parts of the site. 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). 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. With this in mind, I do not agree with the appellant that lands 'self-conditioned' for the exclusion of dwellings prior to the construction of the GDDR (as well as any lands detailed as open space/taken in charge etc) under that approved SHD (ref.312214-21) would be considered outside of scope, particularly as details under that consent could be amended.
- 7.7. The appellant raises the Protected Structure status of the existing buildings on the site. I note that the appellant suggests that the use of the word 'may' imparts a low threshold with respect to applicability. Reference is also made to the Architectural Heritage Guidelines which state in section 6.7.1 that 'Any development that would

materially affect the character of a protected structure or a proposed protected structure may be refused without attracting compensation'. However, this reference is to development proposals that 'materially affect the character of the protected structure' and therefore requires a degree of assessment of a particular proposal in the first instance to determine the material affect i.e. the significance of any impact. That is not the same as a wholesale exclusion of development to Protected Structures. Therefore, there is no in principle exclusion of development to, or adjoining, the Protected Structure of the site, and these parts of the site remain in-scope.

- 7.8. With respect to the part of the site labelled E in the appellants documents, this is formed of a narrow strip of land, which also extends into the part of the site labelled D. These parts of the site could not be reasonably developed for dwellings given the narrow extent of the lands at that location. As such, they would not meet the criteria for in-scope lands under Section 653B(c) being affected by physical condition to such an extent as to preclude the provision of dwellings.
- 7.9. 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 majority of the site is in-scope for inclusion on the RZLT map. Those parts of the site formed of a narrow strip and labelled E (including part of area D) should be excluded as the physical condition (narrowness) of these parts of the site would preclude the provision of dwellings.

8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority in part, that the site apart from those areas overlapping the GDDR scheme is in-scope for the RZLT, with the exception of the narrow strip areas labelled E (and part D), where physical condition precludes the development of dwellings. All remaining areas of the site remain in scope.

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 section 3.1.2 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site (apart from those areas overlapping the Glenamuck District Distributor Road scheme) are in-scope for the RZLT, with the exception of the narrow strip areas labelled E (and part D), where physical condition precludes the development of dwellings. All remaining areas of the site remain in scope.

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

25 August 2023