



An
Bord
Pleanála

Inspector's Report ABP-316999-23

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

Combined landholding in the Cherrywood Strategic Development Zone.

Local Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

DM22/0087.

Appellant(s)

Quintain Developments Ireland Limited.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021,P7 DELA00000040,M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) refer to lands within the Cherrywood Strategic Development Zone.

Cherrywood SDZ is located close to Cabinteely village, north of Loughlinstown and west of Ballybrack. The appeal lands refer to a series of separate sites situated at various locations within Cherrywood SDZ.

The grounds of appeal in Table 1.1 note that the beneficial owners are under the ultimate control of LSREF V Eden Propco Holdco S.a.r.l and therefore should not be considered in isolation.

The appellants, Quintain Developments Ireland Limited, are the Development Manager of a strategic residential site at Cherrywood SDZ.

2.0 Zoning and other provisions

Policy Objective CS9- Strategic Development Zone. 'it is a policy objective to continue to implement the approved planning scheme for the Cherrywood Strategic Development Zone'.

The lands are located on with the Cherrywood Strategic Development Zone (SDZ). The Planning Scheme designates the lands which are the subject of this appeal for Residential use or Town Centre.

3.0 Planning History

Cherrywood SDZ.

There is extensive planning history associated with the various land parcels which are included in this appeal. The Local Authority in its assessment has set out in detail the planning history for each. In summary these include inter alia:

L1W: DZ23A/0005 refers to an application by LSREF V EDEN L1 Ltd for 89 residential units (June 2023 grant).

L1E&L2: DZ21A/0334 refers to a grant for 482 residential units.

TC5: DZ21A/0932 refers to a grant for 146 dwellings. DZ18A/0499 refers to a grant for 146 dwellings.

TC6: DZ22A/0133 refers to a grant for 162 dwellings. ABP303429-19 refers to a grant for 182 dwellings.

P7: DZ23A/0120 refers to an application LSREF V EDEN Ltd for 240 BTR residential units (April 2023 grant).

M1: DZ22A/1021 refers to an application LSREF V EDEN M1 Ltd for 283 residential units (June 2023 grant).

M4: DZ21A/1085 refers to a grant for 44 dwelling units.

T2Apts (remainder of Plot T2): DZ21A/0664 refers to a grant for 47 dwellings.

T3: DZ22A/0729 refers to a grant for 57 dwellings.

T5: DZ21A/1042 refers to a grant for 122 dwellings.

T13: DZ23A/0028 refers to a grant for 56 dwellings.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the draft map, requesting that lands be excluded on the basis that the Cherrywood Planning Scheme sets out the requirements for the development of the subject lands and given the staged and staggered nature of the delivery of infrastructure and thresholds placed on the total quanta of units that can be delivered, there is a resulting preclusion of development at the current time that affects the subject lands. The Phasing requirements in the planning scheme represent a 'statutory designation' under the terms of the TCA 1997 that precludes development within the SDZ area except in accordance with the requirements contained therein.

5.0 Determination by the Local Authority

SPLIT Determination:

The local authority decided to include and exclude land as identified on Figure 1 on and from the final maps of the RZLT for the following reasons:

1. The land is zoned for solely or primarily for residential use, or for a mixture of uses, including residential. Where zoned for a mixture of uses, it is reasonable to consider that the lands are vacant or idle.
2. It is reasonable to consider that land may have access, or be connected, to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development.
3. It is reasonable to consider that the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

And,

4. Whilst the land is solely or primarily for residential use, it is reasonable to consider the land did not have access to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development as at the relevant date of 1st January 2022, in the form of the road network.

I draw the Board attention to the lands included in Figure 1. Those determined to be included in the final RZLT map correspond with Development Area 1 Lehaunstown (L1Q, L1E and L2), Development Area 2 Cherrywood (TC5 and TC6), Development Area Priorsland (P7) and Development Area 8 Tully (T1, T2 Apts. (remainder of plot T2), T3, T5 & T 13). And those determined to be excluded from the final map corresponds with Development Area 7 Macnebury (M1 & M4).

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal are summarised as follows:

- The Cherrywood landholding subject to this appeal is a single strategic residential site and should not be seen and assessed for RZLT in isolation.
- The SDZ status is a 'statutory designation'. Lands with such designation that precludes their development should not be considered as being 'in scope' for the RZLT.
- Lack of consistency between Councils with other Councils excluding SDZ lands from RZLT.
- The strict highly prescriptive phasing and infrastructural requirements of the Cherrywood Planning Scheme often preclude development.
- The entire strategic residential site cannot reasonably or feasibly be delivered in a single tranche.
- In relation to sub sites L1W, L1E&L2, T1, T3, T5, T13 and P7, the appellants are not the sole owner of lands that will comprise Grande Parade, therefore it is not accurate to conclude that this vital piece of infrastructure is 'within their gift' to deliver.

- A similar issue arises in respect of sub site TC5 which requires lands in the ownership of WNS to provide road and footpath infrastructure to serve the development.
- In relation to sub sites L1W, L1E&L2, T1,T2 (Apts) T3 and T5 DLR assert that the appellant is using an interim surface water solution at sub site P7 for some planning applications, that those sites have access to this surface water infrastructure option. The planning applications are only proposing to use the option of a temporary solution as P7 as Attenuation Pond 2A has yet to be commenced by DLRCC and is subject to securing URDF funding. This precludes development and permanent surface water infrastructure was not in place in the 1st January 2022. There is a clear infrastructural deficiency that is precluding development on the appellants strategic residential site.
- In relation to sub site TC6, the appellants do not own or control Attenuation Pond B.
- Contrary to the claim by DAPT, consent has not been secured from the relevant third parties to connect sub site TC6 to Attenuation Pond B. The site cannot be deemed to be 'fully serviced' for the very reason that a third party consent is required.

7.0 Assessment

The grounds of appeal refer to a lack of consistency between Councils with other Councils excluding SDZ lands from RZLT.

Under section 653J the board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states that *"in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only"*.

Page 7 of the RZLT Guidelines state *"to satisfy the criteria as identified in section 653B, land must be zoned residential use or for mixed uses including residential within a Development Plan, Strategic Development Zone Planning Scheme or a Local Area Plan. This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed use zonings where residential development are permitted in principle."*

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential. The bulk of the appeal lands are identified for residential use with 2 plots identified for town centre where residential use is permissible and therefore within scope of section 653B(a).

With regard to the lands identified as TC Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. This is not disputed by the appellants.

The grounds of appeal submitted that the appeal lands are located within Cherrywood SDZ and that the Planning Scheme requires the sequential delivery of infrastructure and residential units and as such all SDZ lands are not available at the same time. The phased delivery of Planning Scheme is not a criteria for exclusion under Section 653B of the Taxes Consolidation Act 1997 as amended.

The grounds of appeal also submit that the SDZ status is a 'statutory designation'. Lands with such designation that precludes their development should not be considered as being 'in scope' for the RZLT. I note that appellants argument that lands with SDZ designations should be precluded and different approaches taken by local authorities in their assessment of SDZ lands for the purposes of RZLT. The lands are not the subject of a statutory designation and the grounds of appeal relating to this matter should be dismissed.

The appellants submit that it is not reasonable to consider that the lands have access to or can be connected to services as the phased delivery of SDZ lands precludes all lands being available for development at the same time. In addition some services require third party consents and in the absence of these consents do not comply with section 653B of the TCA Act 1997 as amended. As such it is submitted that there is a clear infrastructural deficiency that is precluding development on the appellant's strategic residential site. DLR assessment refers to comments/assessment by the Development Agency Project Team Cherrywood SDZ (DAPT), I note that local authority assessment refers to comments from the DAPT, there is no separate report on file.

The DAPT in their comments (summarised in the local authority assessment) noted that infrastructure in under construction, constructed and in situ or is to be constructed relating to L1W, L1E & L2, T1, T2 Apts (remainder of plot T2), T3, T5 and T13 as such is in scope. TC5 and TC6 are fully serviced and in the ownership of the relevant landowners the subject of this appeal. P7 is the subject of a live application (at the time of the submission) and in scope. M1 & M4 is considered outside the scope.

This is disputed by the appellants who submit that in relation to sub sites L1W, L1E&L2, T1, T3, T5, T13 and P7, the appellants are not the sole owners of lands that will comprise Grande Parade, therefore it is not accurate to conclude that this vital piece of infrastructure is 'within their gift' to deliver. It is submitted that a similar issue also arises in respect of sub site TC5 which requires lands in the ownership of WNS to provide road and footpath infrastructure to serve the development. And in relation to sub sites L1W, L1E&L2, T1,T2 (Apts) T3 and T5 DLR assertion that the appellants are using an interim surface water solution at sub site P7 for some planning applications, that those sites have access to this surface water infrastructure option is inaccurate. The appellants submit that the planning applications are only proposing to use the option of a temporary solution as P7 as Attenuation Pond 2A has yet to be commended by DL RCC and is subject to securing URDF funding. All of which precludes development and permanent surface water infrastructure was not in place in the 1st January 2022. And that there is a clear infrastructural deficiency that is precluding development on the appellants strategic residential site.

The appellants submit that in relation to sub site TC6, the appellants have outlined that they do not own or control Attenuation Pond B. And contrary to the claim by DAPT, consent has not been secured from the relevant third parties to connect sub site TC6 to Attenuation Pond B. And as such the site cannot be deemed to be 'fully serviced' for the very reason that a third party consent is required.

Section 4.1.1(iii) of the RZLT Guidelines relates to 'Services to be considered'.

Under this section it is stated that *"This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. 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."*

Having regard to the information on file, the grounds of appeal and the local authority submission I consider based on the provision of Section 653B(b) and having regard to the guidance in section 4.1.1 of the RZLT Guidelines that it is reasonable to consider the lands in question 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. The local authority scoped the lands in and I note there is no correspondence on file from Uisce Eireann.

The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended

Having regard to the foregoing I consider that the lands identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021, P7 DELA00000040, M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Conclusion & Recommendation

The lands identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021, P7 DELA00000040, M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021, P7 DELA00000040, M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) on the final map.

9.0 Reasons and Considerations

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 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax.

The land identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021,P7 DELA00000040,M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) are considered in scope of section 653B(a). The lands are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible in principle and there is no reason why they cannot be developed in principle in accordance their permissible uses.

The lands identified as DM22/0087 (L1W, L1E & L2 Parcel ID DELA00000039, TC5 DELA00000026, TC6 DELA00000021,P7 DELA00000040,M1 DELA00000019, M4 DELA00000018, T1 DELA00000015, T2 Apts (remainder of plot T2 DELA00000035, T3 DELA00000030, T5 DELA00000027 and T13 DELA00000029) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

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.

Dáire McDevitt

Senior Planning Inspector

19th September 2023