



An  
Bord  
Pleanála

## Inspector's Report ABP-317001-23.

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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>	Finglas Road, Dublin 11.
<b>Local Authority</b>	Dublin City Council.
<b>Local Authority Reg. Ref.</b>	RZLT 000043.
<b>Appellant</b>	Ruirside Developments Ltd.
<b>Inspector</b>	Dáire McDevitt

## **1.0 Site Description**

The lands subject to this appeal, identified as RZLT 000043 (Parcel ID DCC000000484), form part of the former Premier Dairies Site which comprises a brownfield site located along the eastern side of Finglas Road opposite the Clearwater Shopping Centre, The lands are bounded by high trees/high walls/shrubbery and fencing.

## **2.0 Zoning**

The lands are zoned Z1 (Sustainable Residential Neighbourhoods) in the Dublin City Development Pan 2022-2028. Residential is a permissible use under this land use zoning objective.

## **3.0 Planning History**

**PA Ref. LRD6010/22-23** refers to a grant of permission for a LRD comprising amendments to permitted SHD (ABP Ref. 310722-21) for 9 additional units.

**ABP Ref. 310722-12** refers to a grant of permission for 191 apartments, childcare facilities and associated site works.

**ABP Ref. 305312-19** refers to a SHD development that was a granted permission which was subsequently quashed by High Court following Judicial Review.

There are a number of older applications for the lands included in the local authority assessment.

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

The appellants made a submission to the local authority seeking to have their lands removed from the draft map on the basis that the application of a punitive tax measure could have unintended consequences and impact negatively on the supply of new homes and would therefore run contrary to the stated objectives of Housing for All and mitigate against the realisation of housing allocation targets under the Core Strategy of the Development Plan.

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

The local authority determined to include the site on the final map on the basis that the site constitutes land satisfying the relevant criteria set out in Section 653B of the Act.

Reason:

The lands:

- a) Are zoned solely or primarily for residential use.
- b) Have access to, or can 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 and with sufficient service capacity available for such development, as evidenced by the notice to grant of planning permission for a large scale residential development on the lands.
- c) Satisfy the other relevant criteria under section 653B of the TC Act.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Grounds of appeal are summarised as follows:

- RZLT is a punitive tax.
- The planning authority have not provided a report of each site confirming how the criteria under section 653B is met, including that there is sufficient

capacity available for such development and that there would be no significant works required to enable same to occur.

- Request that ABP make the assessment of the planning authority on these lands be provided to the appellant and that the appellant is afforded the opportunity to comment on same as part of the process.
- It is advised that at the 1 January 2022, the ESB had approached the appellant on the basis that they had identified their lands for a new regional electricity substation and as a result the appellants are in dialogue with the ESB regarding this matter. ABP are invited to consider whether this fact would result in the lands in question being 'not in scope' as the lands being identified by the ESB for energy infrastructure and facilities having regard to section 653B (c)(iii)(III).

## 7.0 Assessment

The grounds of appeal raised that the tax is considered punitive, this is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. 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. 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"*.

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 appeal lands are zoned Z1 (Sustainable Residential Neighbourhoods) and therefore within scope of section 653B(a).

The appellant has set out in the grounds of appeal that the planning authority have not provided a report of each site confirming how the criteria under section 653B is met, including that there is sufficient capacity available for such development and that there would be no significant works required to enable same to occur. And requested that ABP make the assessment of the planning authority on these lands be provided to the appellant and that the appellant is afforded the opportunity to comment on same as part of the process. I note the request by the appellant, there is no provision for same in the legislation.

Correspondence on file from Uisce Eireann states that UE can confirm that the subject site is serviceable. And from their available GIS records there is a water main running parallel to the site boundary along the R135. And in relation to wastewater networks that the nearest sewer is c.35m north of the site along Glenhill Road and depending on the size of any proposed development, service upgrades may be required. Email on file from DCC Drainage Division regarding surface water sewer.

Page 8 of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 (RZLT Guidelines) sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Issues relating to assessment of capacity were queried by the appellants. Based on the information available I have no evidence that this is an issue.

Pg. 24 of the RZLT guidelines state:

*If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.*

The provision of infrastructure to the subject lands are considered to be in the control of Dublin City Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

With regard to the provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting and water connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Overall I am of the view that is reasonable to conclude that the site may have access to public infrastructure and utilities, including roads and footpaths as such complies with criteria for inclusion under section 653B(b)

With regard to the appellants advisory to the Board that at the 1 January 2022, the ESB had approached the appellant on the basis that they had identified their lands for a new regional electricity substation and as a result the appellants are in dialogue with the ESB regarding this matter. ABP are invited to consider whether this fact would result in the lands in question being 'not in scope' as the lands being identified by the ESB for energy infrastructure and facilities having regard to section 653B(c)(iii)(III). I note that the grounds of appeal do not include correspondence from the ESB. The local authority determined that the lands are in scope. Based on the information provided and available I have no evidence that this is not the case and do not consider that the lands should be scoped out the grounds of potential ESB requirements that are stated to be at 'discussion' stage. Furthermore I note that there is a live grant of planning permission for a residential development on these lands.

Having regard to the foregoing I consider that the lands identified as RZLT 000043 (Parcel ID DCC000000484), 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.

## **Conclusion**

The lands identified as RZLT 000043 (Parcel ID DCC000000484) are located on lands where residential development is permissible, with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The lands are accessible and there is no reason why they cannot be developed in accordance with the zoning objective – Z1 that applies to this site.

I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 000043 (Parcel ID DCC000000484), meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, should be retained on the map and the grounds of appeal dismissed .

## **8.0 Recommendation**

I recommend that the board confirm the determination of the local authority and that the indicated lands be retained on the map.

## **9.0 Reasons and Considerations**

The lands identified as RZLT 000043 (Parcel ID DCC000000484), 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.*

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Dáire McDevitt  
Senior Planning Inspector

4<sup>th</sup> July 2023