



An
Bord
Pleanála

Inspector's Report

ABP-317815-23

Type of Appeal

Appeal under section 653J(2) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax.

Location

Lands at Newcastle, South Newcastle, Co. Dublin.

Local Authority

South Dublin County Council.

Planning Authority Reg. Ref.

SD-C272-2

Appellant(s)

Cairn Homes Properties.

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) refers to lands at Newcastle, South Newcastle, Co. Dublin.

Cairn Homes had lodged two appeals under section 653J(1) following publication of the Draft RZLT Maps under ABP 316315-23 (SD – C259-05, land parcel ID SDLA00026767 for lands at Newcastle (forming part 3 of Graydon Development) to the north of the current appeal lands and under ABP 316321-23 (SD- C259-04, parcel ID SDAL00111562) for lands to the west.

2.0 Zoning and other provisions

The relevant plan is the South Dublin County Development Plan 2022-2028.

The lands are zoned '*RES-N*' with a stated objective is '*to provide for new residential communities in accordance with approved area plans*'. Residential development is permitted in principle on lands zoned RES-N.

SD010 Newcastle Burial Channel is located on the lands.

3.0 Planning History

Application of note include inter alia:

PA Ref. SD22A/0459 (ABP316066-23) refers to a current appeal by Cairn Homes Properties Limited for the construction of a two storey creche / childcare facility of c. 778sq.m Access will be from the constructed entrance onto Newcastle Boulevard and cycle and car parking are as permitted (under TA06S.305343 & ABP305343-19); This application will replace and supersede the permitted creche of c. 518sq.m (under ABP References, TA06S.305343 & ABP305343-19).

ABP-305343-19 refers to a December 2019 grant of permission for a SHD application by Cairn Homes Properties Limited. Permission for the demolition of 5 no. structures, construction of 406 no. residential units (281 no. houses, 125 no. apartments) creche

and associated site works. Condition no. 20 relates to Archaeological Monitoring and recording. This site overlaps part of the appeal site.

Planning Application of note associated with the lands (or immediately adjacent to which may overlap at times with):

SD23A/0043 refers to a 2023 grant of permission to Cairn Homes Property Limited. For the demolition of the existing dwelling and associated structures and the construction of a residential development of 39 dwellings comprising of 15 two storey houses and 24 duplex apartment/apartments in 2 three storey buildings and all associated site works. Condition no. 25 relates to Pre-Commencement Archaeological Testing and reads as follows:

SD20A/0186: Refers to a 2020 grant of permission to Cairn Homes Property Limited for option of the inclusion of an ancillary single storey garden room structure (c.12.5sq.m) in gardens of permitted dwellings under planning Reg. Ref. ABP-305343-19.

Other Relevant Planning History

ABP-313814-22 refers to a current application by Cairn Homes Properties Limited for a SHD consisting of 280 no. residential units (128 no. houses, 152 no. apartments), creche and associated site works located to the west.

SD21A/0247 refers to a 2020 grant of permission to Cairn Homes Property Limited for the demolition of existing derelict dwelling and the construction of a replacement. Condition no. 3 relates to Archaeological Monitoring, Recording and Reporting. This site is located to the north.

SD19A/0129 refers to a 2019 grant of permission to Cairn Homes Properties Limited for the demolition of derelict dwelling on site and the construction of a replacement two storey, five bedroom detached dwelling house (215.2 sqm) together with all associated landscape, boundary, site and development works. Condition no. 3 relates to Archaeological Monitoring. This site is located to the north of the current appeal lands.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority which is summarised in the local authority assessment report. This outlines that the appellants sought to have their land removed from the supplemental map, requesting that lands be excluded on the basis that: 1) the southwest portion of the land parcel includes a local objective to provide a school and the appendix 4 of Section 28 Guidelines outlines that where land is identified on a statutory land use plan being required for inter alia education, it should fall out of scope. And 2) that the majority of the land parcel is under construction and nearing completion and occupation by residents as part of the Graydon SHD (SHD-ABP-305343-19) and therefore the entire parcel of and should be excluded.

5.0 Determination by the Local Authority

The local authority determined:

Amend land parcel SDLA00111555 on the map.

It has been determined that Land Parcel SDLA00111555 as amended, as shown in Figure 8 fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and 2022 Section 28 Ministerial Guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map and will be included in the final map published on 01 December 2023.

The Determination states 'Please refer to the Assessment Report for further details'.

I draw the Board attention to the portion of the land parcel excluded from the final RZLT map which refers to lands identified for future school site in both the LAP, CDP and in the SHD Application (ABP 305343-19). I note that while this is not stated in the local authority Determination dated 25th July 2023, Figure B clearly shows the amended map showing the portion of lands identified under Land Parcel ID SDLA 00111555 which were Determined by the local authority to remain in the final RZLT map.

6.0 The Appeal

6.1 Grounds of Appeal

The appeal does not dispute the exclusion of the school site and this portion of the land parcel does not form part of the current appeal.

The grounds of appeal are summarised as follows:

- The lands should be omitted from the RZLT map given a portion of the lands are required for community infrastructure as there is a permitted c.518sq.m creche in site as part of SHD ABP 305343-19).
- A larger creche (c.778sq.m) on the same site was granted permission by SDCC, which is the subject of a current third party appeal relating to creche (ABP316066-23).
- It is submitted that the lands should be excluded where land is identified on a statutory plan for land use being required for inter alia education. As the creche is an education/community use and therefore should be removed or should be removed as a use which is under construction/hearing completion/occupied.

7.0 Assessment

The comments raised in the appeal and the local authority assessment are noted.

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 lands are zoned residential and therefore are considered within scope of section 653B(a)(i).

The grounds of appeal submit that the lands should be excluded as they contain a permitted creche. The creche was permitted as part of an SHD permission for 406 residential units in 2019. It is submitted that the creche is a social/community/education use.

Page 11 of the Residential Zoned Land Tax – Guidelines for Planning Authorities 2022 states ‘ *where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I)-(IV) by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the lands area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out.*’ In this instance the lands are zoned RES-N where residential use is permissible. There are no exclusions of specific objective pertaining to the education/community or social use of the portion of the land parcel SDLA00111555 which is the subject of this appeal, as such I consider them to be within the scope and do not meet the provision of section 653B(c) for exclusion from the map.

A copy of the original submission to SDCC is included with the appeal documentation and I note that there is reference to the overall Graydon development being either under construction, completed or occupied. And while this is not a ground of appeal I note section 4.1.1 (ii) of the Residential Zoned Land Tax- Guidelines for Planning authorities June 2022, page 23 states “ where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope, subject to (iii) below”. Section 4.1.1 (iii) refers to services to be considered. And Page 8 of the Residential Zoned Land Tax Guidelines for Planning Authorities June 2022 states ‘Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps. However owners of residential properties within these areas will not be liable for the tax (see section 653O(1)(a) of the legislation’.

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 legislation does not give the board a role in determining relevant site by applying the provisions of section 653O. 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 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".

Compliance with the provisions of section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

Having regard to the foregoing I consider that the lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) zoned RES-N meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the lands from the final map.

8.0 Conclusion & Recommendation

The lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) are located on lands zoned residential 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 with the residential zoning objective that applies to these lands. The lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) 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 SD-C272-2 (Land Parcel ID SDLA00111555) 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 lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) are zoned residential, 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 with the residential zoning objective that applies to these lands. The lands identified as SD-C272-2 (Land Parcel ID SDLA00111555) 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 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.

Dáire McDevitt

Senior Planning Inspector

17th October 2023