



An
Bord
Pleanála

Inspector's Report

ABP-317879-23

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 Finnstown, Adamstown, Lucan, Co. Dublin.

Local Authority

South Dublin County Council.

Planning Authority Reg. Ref.

SD-C272-4

Appellant(s)

Clear Real Estate Holdings Limited
(managed by Quintain Developments Ireland Limited).

Inspector

Daire McDevitt.

1.0 Site Location and Description

The lands identified as SD-C272-4 (parcel ID SDLA00113560) refer to lands at Finnstown, Adamstown in Lucan, Co. Dublin.

2.0 Zoning and other provisions

The site forms part of Adamstown Strategic Development Zone (SDZ) which in turn forms part of the South County Dublin Development Plan, 2022 to 2028. The relevant zoning objective is: *'To provide for strategic development in accordance with approved planning schemes.'*

Within Adamstown SDZ the land are located within Development Area 1 Adamstown Castle, Development Area 7 St. Helen's and Development Area 9 Adamstown Square.

CS7 Objective 4: *to promote and facilitate development at the Strategic Development Zones at Adamstown and Clonburris, in accordance with their planning scheme and associated phasing requirements, whilst adapting to and facilitating emerging transport service level pattern needs.*

Policy QDP15: Strategic Development Zones (SDZs) Continue to implement the approved planning schemes for Adamstown and Clonburris SDZs.

QDP15 Objective 1: *To support the delivery of the identified infrastructure to facilitate sustainable development in South Dublin's Strategic Development Zone.*

3.0 Planning History

There is extensive planning history associated with the overall Adamstown SDZ. The most recent and relevant history associated with the appeal site is:

SDZ23A/0012 refers to September 2023 grant for 205 Residential Units overall (20,977 sqm GFA), consisting of; - St. Helens Development Area - 153 no. units comprising 1 no. 2 storey 3 bedroom detached house, a total of 108 no. duplex units, all in 3 storey buildings and terraced in a mix of 54 no. 3 bedroom units, 42 no. 2 bedroom units and 12 no. 1 bedroom units and a 5 storey (with undercroft parking) apartment block containing 44 no. units a mix of 13 no. 1 bedroom, 4 no. 2 bedroom (3 person) and 27 no. 2 bedroom (4 person) apartment units. - Adamstown Castle Development Area - 16 no. units comprising 3 no. 2 storey 3 bedroom terraced houses, 1 no. 3 storey 4 bedroom end terrace house, a total of 12 no. duplex units, in a range of 3 - 4 storey buildings in a mix of 8 no. 3 bedroom units and 4 no. 2 bedroom units. - Adamstown Square Development Area - 36 no. units comprising 20 no. 2 storey 3 bedroom terraced houses, 4 no. 2 storey 4 bedroom terraced houses, a total of 12 no. duplex units, all in 3 storey buildings and terraced in a mix of 6 no. 3 bedroom units, 4 no. 2 bedroom units and 2 no. 1 bed units. The development proposes the relocation of an existing ESB substation within and otherwise undeveloped part of the Adamstown Square Development Area and all other ancillary site development and landscape works; including new vehicular access points off Castlegate Grove, Adamstown Park, Adamstown Way, Tandy's Lane and Stratton Heath; public and communal open space; car parking and bicycle parking. The lands are generally bounded by Adamstown Park to the West, Stratton Walk residential units and Adamstown Avenue to the South, Stratton Heath, Finnstown House (a Protected Structure), development permitted under Reg. Ref. SDZ20A/0020 and also Castlegate Grove/Castlegate Close to the east and Adamstown Park and Tandy's Lane (road) and Tandy's Lane Park to the North. Adamstown Way passes between the application site All within the Adamstown Strategic Development Zone. (undecided at the time SDCC made its Determination on the RZLT).

4.0 Submission to the Local Authority

The appellants made a submission to the local authority which is summarised in the planning authority assessment which sets out that appellants sought to have their land removed from the supplemental map, requesting that lands be excluded on the basis that a) the subject land parcel is dependent upon the completion of Adamstown Way and the delivery of an access road (and associated footpaths) by a third party. Adamstown Way is only partially constructed and as such the land are inaccessible from the envisaged north west route along Adamstown Way. And b) having regard to the location, canopy extent and root protection area of the historic trees within and bordering the subject land parcel, the residential development of a significant portion of same is not possible and as such the lands should be considered 'out of scope'.

5.0 Determination by the Local Authority

The local authority determined:

1. The land in question is included in a development plan or local area plan and is zoned for residential development or zoned for mixture of uses, that includes residential development.
2. The land is serviced, or it is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed.
3. The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence or archaeological or historic remains.

6.0 The Appeal

6.1 Grounds of Appeal

Grounds of appeal are summarised as follows:

- Land are not accessible as Adamstown's Way is only partially constructed.

- The delivery of the access road (and associated footpaths) from Adamstown Way that is permitted adjacent to the north west boundary of the lands subject to this appeal (SDCC Ref. SDZ20A/0020 with connections to Tandy's Lane lodged by a third party) has not yet commenced and thus essential road linkages in third party control are not in place.
- Site forms part of a larger site where at the time of appeal there was a liver application under SDCC SDZ23A/0012.
- Having regard to the dependency of the residential development of the lands in the ownership of Clear Real Estates Holdings Limited in the townland of Finnstown on the delivery of road and footpath infrastructure by third parties, the lands subject to this appeal are considered 'out of scope'.
- Having regard to the (i) location, (ii) nature, (iii) canopy extent and (iv) root protection areas of the historic trees within and bordering the lands subject to this appeal, the residential development to a significant portion of same is ultimately not possible, and as such the lands should be considered 'out of scope'.

7.0 Assessment

The comments raised in the appeal and by the local authority are noted. 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 zoning submissions by applying the provisions of section 653I. 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".

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 appeal lands are in scope of section 653B(a).

The grounds of appeal submit that having regard to the (i) location, (ii) nature, (iii) canopy extent and (iv) root protection areas of the historic trees within and bordering the lands subject to this appeal, the residential development to a significant portion of same is ultimately not possible, and as such the lands should be considered ‘out of scope’. I note that an application for a residential development was lodged on the lands at the time of the appeal. Any application on the lands would have regard to the “(i) location, (ii) nature, (iii) canopy extent and (iv) root protection areas of the historic trees within and bordering the lands”, the presence of which would not preclude residential development on the lands as any proposed layout would have regard to same. Having regard to section 653B(c) I consider that it is reasonable to consider the lands are not affected, in terms of physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including the contamination or the presence of known archaeological or historic remains.

The appeal lands are located within Adamstown SDZ. The grounds of appeal submit that the lands are not accessible. The delivery of the access road (and associated footpaths) from Adamstown Way that is permitted adjacent to the northwest boundary of the lands subject to this appeal (SDCC Ref. SDZ20A/0020 with connections to Tandy’s Lane lodged by a third party) has not yet commenced and thus essential road linkages in third party control are not in place.

This section of connecting road is within the control/ ownership of a third party and consent was not forthcoming on the relevant date of on the date the local authority made its Determination.

Section 4.1.1 iii) of the Guidelines relates to services to be considered. In order to access the subject lands, it will be necessary traverse third party lands. The proposed access road at this location, which links the consented development to the adjacent existing public road to the south is not in place at present.

For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In this instance access to the lands would be via third party lands outside of the ownership of either the appellant or local authority and my opinion it is not reasonable to that the land may have access to, or be connected to public infrastructure and on this basis the lands do not satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Having regard to the provisions of Section 653B(b) of the Act, I am not satisfied that it is reasonable to consider that the lands 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 appeal lands identified as SD-C272-4 (parcel ID SDLA00113560) should therefore be removed from the final map.

8.0 Conclusion & Recommendation

The lands identified as SD-C272-4 (parcel ID SDLA00113560) do not meet the qualifying criteria set out in section 653B(b) of the Taxes Consolidation Act 1997, as amended. And I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as SD-C272-4 (parcel ID SDLA00113560) from 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-C272-4 (parcel ID SDLA00113560) do not meet the qualifying criteria set out in section 653B of the Taxes 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.

Dáire McDevitt

Senior Planning Inspector

17th October 2023.