



An  
Bord  
Pleanála

## Inspector's Report ABP-320314-24

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**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 Map

**Location**

Lands at Chesterfield, Cross Avenue, Booterstown, Co. Dublin

**Planning Authority**

Dun Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

DM24/0003

**Appellant(s)**

Cairn Homes PLC

**Inspector**

John Duffy

## **1.0 Site Location and Description**

- 1.1. The subject lands, measuring approximately 3.17 hectares, are located on the southern side of Cross Avenue in Blackrock, Co. Dublin. The lands accommodate Chesterfield House, an existing dwelling, which has the benefit of extensive lands within its curtilage.
- 1.2. The appeal lands comprise part of Land Parcel ID DELA00002108 on the RZLT map.

## **2.0 Zoning and Other Provisions**

- 2.1. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2022 – 2028.
- 2.2. The appeal lands are zoned Objective A in the Development Plan with the zoning objective ‘To provide residential development and improve residential amenity while protecting the existing residential amenities.’

## **3.0 Planning History**

### RZLT Appeal

An Bord Pleanála Ref. ABP-316411-23 / Planning Authority Ref. DM22/0036 refers to an August 2023 decision to include the subject lands on the RZLT map given that they meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

### Other

An Bord Pleanála Ref. ABP-313252-22 relates to a Strategic Housing Development (SHD) for demolition of the non-original fabric of Chesterfield House and sheds, construction of 366 no. residential units (8 no. houses, 358 no. apartments), crèche and all associated site works. A split decision was made in September 2024 in which permission was granted for, inter alia, 11 no. units, and permission was refused for 355 no. build to rent (BTR) apartments and a creche facility. The Board considered that the development would represent an over-proliferation of BTR in the area. It noted that a residential development of this size in this serviced residential

development site would in principle be consistent with the relevant objectives of the Development Plan and national policy.

An Bord Pleanála Ref. ABP-302921-18: Permission was granted in February 2019 for a SHD comprising demolition of the non-original fabric of Chesterfield House (a protected structure) and derelict sheds and for construction of 214 apartments and 7 no. houses, residents' amenity facility and all associated works. This decision was quashed by order of the High Court in July 2019.

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

The appellant made a submission to the Local Authority seeking to have the lands removed from the RZLT map on the following basis:

- The challenges and timeframes involved obtaining planning permission are detailed and it is considered that RZLT should only apply when permission is secured.
- Lands do not meet the qualifying criteria under section 653B(b)
- A new surface water drain is required along Cross Avenue for a distance of approximately 600 m. Furthermore, a new water main is required by Uisce Éireann (UÉ) running from the lands to the existing main at Booterstown Avenue junction, a distance of approximately 200 m. These works involve significant costs outside the normal realm of associated costs.
- Planning permission would have to be secured to provide the infrastructure required to connect into the watermain; therefore, the lands should not be included on the map.
- The subject lands are not in scope because the lands are not connected to or able to be connected to surface water and water supply services.

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

5.1 The Local Authority determined that the lands are in scope for the following reasons:

- The land is zoned solely or primarily for residential use.

- It is reasonable to consider the 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.
- It is reasonable to consider the land is not affected, in terms of its physical condition, by matters to such an extent to preclude the provision of dwellings.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The following points are made in support of the appeal:

- The lands are not serviced, or capable of being serviced in terms of water supply and surface water drainage. As such, the lands do not satisfy the criteria in section 653B(b).
- The lands are not connected to or have reasonable access to public infrastructure. A new 225mm surface water drain is required to be installed along Cross Avenue to connect into the surface water manhole at Mount Merrion Avenue junction, which is a distance of c 600 m. These works are at a significant additional cost and are not within the 'normal' realm of associated costs.
- In terms of water supply, upgrade works are required to increase the capacity of water networks. A new watermain is required from the entrance to the proposed development at Chesterfield to the existing watermain at Booterstown junction, a distance of approximately 200 m. These works are at a significant additional cost and are not within the 'normal' realm of associated costs.
- It is not evident that the Local Authority assessed the development in the context of section 4.1.1 of the RZLT Guidelines in terms of the thresholds for inclusion, and the further criteria for consideration, where these thresholds are not met. This is examined in the appeal within Table 1 and Table 2 respectively.
- The Local Authority's determination has placed unreasonable emphasis on criteria in the Guidelines (section 4.1.1 ii) relating to land where there is a grant of planning permission. However, this site does not have the benefit of an extant permission.

- The Local Authority's assessment does not follow Appendix 4 of the Guidelines in terms of the assessment checklist.
- The appellant is not able to seek a deferral of the tax liability on the lands under section 653AF, as there is no extant permission on the lands.

The appeal includes the following attachments:

- Copy of Local Authority Determination.
- Submission made to Local Authority.
- Site Location Map.

## 7.0 **Assessment**

7.1 The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, 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 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."*

7.2 Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion 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 subject lands are zoned Objective A - Residential and are considered within the scope of section 653B(a)(i).

- 7.3 Having regard to section 653B(b) the site is within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities for dwellings to be developed and with sufficient service capacity for such development.

The main grounds of appeal raised are that the lands are not serviced in terms of water supply or surface water drainage infrastructure. In terms of water supply, UÉ has advised that a water main exists on the public road in close proximity to the site but has limited capacity and therefore upgrade works would be needed to facilitate full development of the proposed SHD, requiring a watermain from the site to the existing main at Booterstown Avenue 200 m away. In terms of surface water drainage infrastructure, the Water Services Section of the Local Authority advise that a new surface water sewer would be required, extending for c 600 m from the entrance to the lands

In terms of the requirement for upgrades to the existing systems, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states "Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist."

Having regard to the Guidelines, a need for upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended. While there are upgrades required in terms of water supply infrastructure, there is a viable water supply / connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

In terms of surface water drainage infrastructure, it is feasible that a prospective applicant could connect into the surface water manhole at Mount Merrion junction, given that to do so would not necessitate traversing of third party lands; lands in the control of landowner / prospective applicant and the local authority would facilitate such a connection into this infrastructure.

As such, I consider the lands comprising part of Parcel ID DELA00002108 to be in scope on the basis that the criteria included in section 653B(b) are met. I am satisfied that it is reasonable to consider that the lands may have access to, or be connected to public infrastructure or facilities, including roads, 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.

- 7.4 In terms of section 653B(c), given the residential zoning of the site, it is reasonable to consider the lands are not affected by issues to a sufficient extent which would preclude the provision of houses, including contamination or the presence of known archaeological or historic remains.
- 7.5 The grounds of appeal raise issues / shortcomings with the assessment processes used by the Local Authority. While noting that the appellant is dissatisfied with the processes used to assess the lands for RZLT and associated purported shortcomings, such matters are not for consideration by the Board in this appeal, as it is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only.
- 7.6 The appellant refers to the provisions of section 653AF of the Taxes Consolidation Act 1997, as amended which relates to potential for deferral of the tax liability on the lands under section 653AF. This matter and other issues raised relating to the planning history on the lands and the quashing of a SHD permission are outside the parameters of section 653B and, therefore, not for consideration in this appeal.

## **8.0 Recommendation**

- 8.1 I consider that the lands identified as part of Parcel ID DELA00002108 on the RZLT Final Map meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and, therefore, I recommend that the Local Authority determination is confirmed, and the lands be retained on the map.

## **9.0 Reasons and Considerations**

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are

considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as part of Parcel ID DELA00002108 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and they have access to public infrastructure and facilities necessary for residential development with sufficient service capacity for such development as required by section 653B(b), and in accordance with the Objective A residential zoning objective of the Dun Laoghaire County Development Plan 2022-2028 that applies to the lands. It is feasible that the landowner or a prospective applicant could connect into surface water infrastructure by utilising their own lands and those in the control of the local authority. While upgrades are required in terms of water supply infrastructure, there is a viable water supply / connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B(b) of the Taxes Consolidation Act 1997, as amended. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

## **10.0 Recommended Draft Board Order**

**Taxes Consolidation Act 1997 as amended.**

**Planning Authority: Dun Laoghaire Rathdown County Council**

**Local Authority Reference Number: DM24/0003**

**Appeal** by Cairn Homes PLC in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Dun Laoghaire Rathdown County Council on the 25<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Chesterfield, Cross Avenue, Booterstown, Co. Dublin

### **Decision**

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:



The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as part of Parcel ID DELA00002108 on the final map.

### **Reasons and Considerations**

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as part of Parcel ID DELA00002108 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and they have access to public infrastructure and facilities necessary for residential development with sufficient service capacity for such development as required by section 653B(b), and in accordance with the Objective A residential zoning objective of the Dun Laoghaire County Development Plan 2022-2028 that applies to the lands. It is feasible that the landowner or a prospective applicant could connect into surface water infrastructure by utilising their own lands and those in the control of the local authority. While upgrades are required in terms of water supply infrastructure to serve the lands, there is a viable water supply / connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B(b) of the Taxes Consolidation Act 1997, as amended. No capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

I confirm that the report represents my professional 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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John Duffy  
Planning Inspector  
3<sup>rd</sup> October 2024