



An  
Bord  
Pleanála

## Inspector's Report ABP-320378-24

### Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

### Location

Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3.

### Local Authority

Dun Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

DM24/0017

### Appellants

William Neville and Sons



**Inspector**

Sinéad O'Connor



## **1.0 Site Location and Description**

The lands identified as a Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 5 - Growth Area 1 - DM4; Plot 6 – Growth Area 1 – DM3 (Parcel ID DELA00000036, DELA00000031, DELA00000033, DELA00000026, DELA00000032, DELA00000034, DELA00000028) are located in the urban area of Cherrywood. The LA determination relates to 7 no. plots as follows.

- Plot 1 (Parcel ID DELA00000036)
- Plot 2 (Parcel ID DELA00000031)
- Plot 3 (Parcel ID DELA00000033)
- Plot 4 (Parcel ID DELA00000028)
- Plot 5 (Parcel ID DELA00000026)
- Plot 6 (Parcel ID DELA00000032)
- Plot 7 (Parcel ID DELA00000034)

As per the Appeal Statement, this appeal relates to Plots 3, 5 and 6 only.

- Plot 3 (Parcel ID DELA00000033): The site is roughly rectangular in shape and is under grass. This plot adjoins Grand Parade to the north, Domville Drive to the south, Gun and Drum Hill to the west and residential development at Domville Square to the east. The site has an existing vehicular access from Domville Drive.
- Plot 5 (Parcel ID DELA00000026): The site is roughly triangular in shape and is under grass. This plot adjoins Grand Parade/Valley Drive to the north, undeveloped lands to the east and the LUAS line to the south and west. There are existing vehicular entrances to the site from Valley Drive and from Bishop Street.
- Plot 6 (Parcel ID DELA00000032): The site is roughly rectangular in shape and is under grass. This plot adjoins undeveloped lands to the north and west, residential development at the West Courtyard to the east, and Grand Parade to the south. The site appears to have an existing access from the West Courtyard.



## 2.0 Zoning and Other Provisions

The relevant plan is the Cherrywood Planning Scheme 2014 (updated 2023):

- The lands are zoned 'Residential'. Residential is listed as permitted in principle on zoned residential lands.
- Under Chapter 2 'Proposed Development in Cherrywood' Plot 1 is designated Res 4 to deliver 502-1,033 units; Plots 2, 4 and 7 are designated Res 2 to deliver 2,003-3,338 units; Plots 3 and 6 is designated Res 3 to deliver 1,417 to 3,161 units.
- Under Chapter 7 'Implementation: Sequencing and Phasing of Development' Plot 1 is in Growth Area 2, Development Area 1; Plot 2 is in Growth Area 3, Development Area 8; Plots 3, 4, 6 and 7 are in Growth Area 1, Development Area 4; and Plot 5 is in Growth Area 1, Development Area 2.
- Section 7.2.1 states the residential development in Growth Area 1 can be permitted immediately on the basis that necessary infrastructure has been permitted and is under construction. Up to 2,300 residential units in either Growth Area 2 or 3 can be provided in tandem with Growth Area 1.
- Table 7.1 'Provision of Schools' lists the number of residential units that can be permitted both before a site for a school is made available to the Department of Education and after a new school is constructed.

Relevant sections of the Dun Laoghaire Rathdown County Development Plan include the following:

- Section 2.3.7.1 'Potential Residential Yield' states that the Cherrywood SDZ area with yield between 5,596 to 8,186 units.
- Table 2.9 designates the area of Cherrywood as Tier 1 and Tier 2. The Plan does not indicate which areas of the SDZ are Tier 1 or Tier 2.
- 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.



### **3.0 Planning History**

PA Ref. DM22-0053, ABP Ref. 316583-23: On the 17 October 2023, the Board decided to confirm the determination of the local authority and retain the lands on the RZLT map.

DZ15A/0758: On the 16 August 2016 permission was granted for Roads and infrastructure (phase 1) as approved under the Cherrywood SDZ Planning Scheme (2014) to form part of public road network providing access and services for the future development of the adjoining SDZ lands. This permission was extended up to 23 November 2024 under PA Ref. DZ15A/0758/E.

PA Ref. DZ17A/0714 relates to Plot 4: On the 07 August 2018 permission was granted for a residential scheme of 322 no. units and a crèche facility in buildings ranging in height from 2 to 4 storeys set around 3 principal public amenity spaces. This permission was extended up to 14 November 2028 under PA Ref. DZ17A/0714/E.

PA Ref. DZ21A/0414 relates to Plots 4 and 7: On the 05 May 2022 planning permission was granted for a residential scheme of 107 units comprising 63 no. houses and 43 no. apartments.

PA Ref. DZ24A/0291 relates to Plot 4: On the 18 June 2024 the LA requested additional information in respect of an application to amend PA Ref. PA Ref. DZ17A/0714. At the time of writing this report, no response has been made to the PA.

DZ24A/0017 relates to lands to the south and east of the subject site: On 11 June 2024 planning permission was granted for 200 no. residential units and ancillary works.

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

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that the phasing provisions of the Cherrywood Planning Scheme are fluid and each application is assessed with reference to previous applications, that development of the lands is dependent of the delivery of a school that is the subject of agreement between the local authority, the Department of Education and the Third-Party landowner (see PA Ref. DZ24A/0017). Deferrals in the payment of RZLT is sought for Plots 4 and 7 on the basis that these are under



construction.

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

The local authority determined that:

By Order dated 27-June-2024 it was decided to include the below lands on the final map of the Residential Zoned Land Tax for the following reason(s).

- Plot 3, DELA000000033
- Plot 4, DELA000000028
- Plot 5, DELA000000026
- Plot 6, DELA000000032
- Plot 7, DELA000000034

For the avoidance of doubt the reasons and recommendations set out in the planners evaluation report were generally adopted as set out in the Executive Order, see copy attached to this letter.

1. The land is zoned solely or primarily for residential use.
2. It is reasonable to consider the land may have access to, 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 the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

And;

I wish to inform you by Order dated 27-June—2024 it was decided to exclude the below lands on the final map of the Residential Zoned Land Tax for the following reason(s).

- Plot 1, DELA000000036
- Plot 2, DELA000000031

Reason(s)



1. Whilst the lands is zoned solely or primarily for residential use, it is reasonable to consider that proposals for development on the subject plots are permissible density levels would exceed the sequencing and phasing of development for the Growth Areas 2 and 3 in accordance with Objective 7.2.1 of the Cherrywood Planning Scheme regarding phased delivery of residential units.

## **6.0 The Appeal**

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

The grounds of appeal are summarised as follows:

- The appeal relates just to 3 no. plots comprising: Plot 3 (Parcel ID DELA00000033), Plot 5 (Parcel ID DELA00000026) and Plot 6 (Parcel ID DELA00000032).
- The lands are subject to the phasing provisions of the Cherrywood Planning Scheme, which is complex and relates to the delivery of infrastructure. Until all infrastructure is provided as per the Cherrywood Planning Scheme, there is no certainty that there is sufficient capacity in the service infrastructure to serve the lands.
- Regional Attenuation Pond 2A is to be delivered by the LA and will not be operational until Q4 of 2025.
- The LA assessment refers to interim capacity in Pond 2B however, under recent application PA Ref DZ23A/0106 the landowner had to provide a temporary pond.
- Planning permissions have been granted out of sync with the phasing programme in respect of schools' provision. There is no certainty that this practice will continue.

## **7.0 Assessment**

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”.*

The site was the subject of a previous appeal under PA Ref. DM22-0053, ABP Ref. 316583-23. Under this previous appeal, the Board confirmed the determination of the LA to retain the site on the RZLT map. This previous appeal relates to a larger area than the current appeal, which relates just to Plots 3, 5 and 6, as per Figure 2 of the Appeal Statement.

The lands are zoned ‘Residential’ and, therefore, meet the criteria under Section 653B(a) of the Act.

The appellant states that there is no certainty that there is capacity in the public services and infrastructure to serve the lands. It is stated that development is constrained by the phasing provisions of the Cherrywood Planning Scheme in respect of surface water attenuation.

Each of the 3 no. plots has direct frontage onto the road network and each has at least 1 no. existing vehicular entrance. It is, therefore, reasonable to consider that the sites are able to connect to roads, footpaths and public lighting. The road network serving Cherrywood was specifically designed to accommodate vehicular traffic from the development sites; therefore, it is reasonable to consider that there is capacity in the road network to serve development at the sites. Given the emerging urban setting of the sites, and their proximity to roads and existing residential development, it is reasonable to consider that the sites can connect to potable and foul water networks. The UE Wastewater treatment capacity register published June 2023 (accessed 27 September 2024) indicates that there is spare capacity available at the Ringsend WWTP and the Shanganagh WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 27 September 2024) indicates that there is capacity available at the Greater Dublin Area Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8



of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Drawing from the foregoing, it is reasonable to consider that there is capacity in the potable and foul water systems to serve the lands.

The subject sites do not contain contaminated lands and do not contain any historical or recorded structures or archaeological features that would preclude the provision of dwellings. In this regard, the lands meet the criteria under Section 653B(c) of the Act.

The appellant states that there is uncertainty in the phasing programme of the Planning Scheme in respect of the provision of schools and surface water infrastructure. Section 7.2.1 'Sequencing & Implementation Growth Areas' of the Cherrywood Planning Scheme states that development in Growth Area 1 can be permitted immediately. On the basis that the 3 no. plots in question are located in Growth Area 1, it is reasonable to consider that the phasing provisions of the Planning Scheme does not preclude the provision of dwellings at the sites.

In respect of the surface water attenuation infrastructure, it is stated in the appeal that development at the sites is dependent on the delivery of Regional Attenuation Pond 2A, which will not be operational until Q4 of 2025. As per the LA's report dated 27 June 2024, Plots 5 and 6 are served by Regional Attenuation Pond 2b, which is delivered and operational. From the LA's assessment, only Plot 3 is to be served by Regional Attenuation Pond 2A however, it is stated that there is interim capacity to serve this site in Regional Attenuation Pond 2b until such time as Pond 2A is operational. Page 31 of the RZLT guidelines indicates that the availability of a connection to surface water infrastructure can be a determining factor in whether lands are in-scope for RZLT, and that the significance of these works should be assessed. On the basis that the works to deliver Regional Attenuation Pond 2A are being undertaken by the LA and do not require Third-Party consents or CPO, it is reasonable to consider that the works to provide Regional Attenuation Pond 2A are not significant and that surface water capacity in the area does not preclude the provision of dwellings at the subject site. In respect of the requirement to provide a temporary pond to serve Plot 3, I note that these lands are within the control of the appellant and, therefore, would not preclude the provision of dwellings at the site.

The appellant refers to the provision of schools as a limiting factor to development,



and states that inconsistencies in the application of the phasing provisions of the Planning Scheme creates uncertainty in respect of the development of the subject sites. I note that phasing of development under the Planning Scheme is stated to be flexible to ensure the orderly provision of development. I consider it relevant that the planning application referred to in the appeal statement (PA Ref DZ24A/0017) was recently granted planning permission for 200 no. residential units. Page 46 of 85 of the LA Planners Report under PA Ref DZ24A/0017 dated 11 June 2024 accepts that the applicant in that case is in ongoing discussions with the Department of Education in respect of the provision of the schools listed in Table 7.1 of the Planning Scheme. Condition 3 of PA Ref DZ24A/0017 states only that the school shown in the Planning Scheme shall be provided. With reference to the LA's assessment and subsequent condition in respect of schools' provision under PA Ref DZ24A/0017, it is reasonable to consider that residential development at the subject sites would similarly be permissible. Drawing from the foregoing, it is reasonable to consider that the availability of surface water infrastructure and the phasing provisions of the Cherrywood Planning Scheme, including provision of school infrastructure, does not preclude the provision of dwellings at the subject sites.

## **8.0 Recommendation**

Having regard to the foregoing, I consider that the lands identified as Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3 (Parcel ID DELA00000036, DELA00000031, DELA00000033, DELA00000026, DELA00000032, DELA00000034, DELA00000028) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal, which refer only to Plot 3 (Parcel ID DELA00000033), Plot 5 (Parcel ID DELA00000026), and Plot 6 (Parcel ID DELA00000032) 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 subject lands from the final map. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT 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 Authority 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 are identified as Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3 (Parcel ID DELA00000036, DELA00000031, DELA00000033, DELA00000026, DELA00000032, DELA00000034, DELA00000028). The appeal against the LA determination relates only to Plot 3 (Parcel ID DELA00000033), Plot 5 (Parcel ID DELA00000026), and Plot 6 (Parcel ID DELA00000032). These Plots are each zoned 'Residential' and are, therefore, considered in scope of section 653B(a). The subject sites have direct frontage onto the surrounding road networks and have vehicular access to these roads. It is reasonable to consider that the sites can connect to and be served by this existing road infrastructure. Owing to the emerging urban character of the area and the proximity of existing development to each of the sites, it is reasonable to consider that the sites can connect to the existing potable and foul water infrastructure. The UE capacity registers published June 2023 (and accessed 27 September 2024) indicate that there is capacity in the water and wastewater systems to serve the sites. As per the LA's report, Plots 5 and 6 are served by existing surface water infrastructure and there is interim capacity in this system to serve Plot 3 pending the completion of works on Regional Attenuation Pond 2A. In this way, the sites meet the criteria under Section 653B(b) of the Act. There are no physical characteristics or constraints identified at the sites that would preclude the provision of dwellings. In this regard, the sites meet the criteria under Section 653B(c) of the Act. Drawing from the submitted information and with reference to Section 7.2.1 of the Cherrywood Planning Scheme, I do not consider that the phasing provisions of the planning scheme, including the provision of school infrastructure, precludes the provision of dwellings at the site. Recent planning decisions in the vicinity of the sites indicates that the provision of schools is



not a limiting factor to the delivery of development on the basis that negotiations with the Department of Education are ongoing. No 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:** DM24/0017

**Appeal by** William Neville and Sons care of SCA Planning and Development Consultants 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 27 day of June 2024 in respect of the site described below.

**Lands at:** Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3.

### **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 Range of lands within the Cherrywood Planning Scheme Area comprising Plot 3 (Parcel ID DELA00000033), Plot 5 (Parcel ID DELA00000026), and Plot 6 (Parcel ID DELA00000032) on the final map.

### **Reasons and Considerations**

The lands are identified as Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5;



Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3 (Parcel ID DELA000000036, DELA000000031, DELA000000033, DELA000000026, DELA000000032, DELA000000034, DELA000000028). The appeal against the LA determination relates only to Plot 3 (Parcel ID DELA000000033), Plot 5 (Parcel ID DELA000000026), and Plot 6 (Parcel ID DELA000000032). These Plots are each zoned ‘Residential’ and are, therefore, considered in scope of section 653B(a). The subject sites have direct frontage onto the surrounding road networks and have vehicular access to these roads. It is reasonable to consider that the sites can connect to and be served by this existing road infrastructure. Owing to the emerging urban character of the area and the proximity of existing development to each of the sites, it is reasonable to consider that the sites can connect to the existing potable and foul water infrastructure. The UE capacity registers published June 2023 (and accessed 27 September 2024) indicate that there is capacity in the water and wastewater systems to serve the sites. As per the LA’s report, Plots 5 and 6 are served by existing surface water infrastructure and there is interim capacity in this system to serve Plot 3 pending the completion of works on Regional Attenuation Pond 2A. In this way, the sites meet the criteria under Section 653B(b) of the Act. There are no physical characteristics or constraints identified at the sites that would preclude the provision of dwellings. In this regard, the sites meet the criteria under Section 653B(c) of the Act. Drawing from the submitted information and with reference to Section 7.2.1 of the Cherrywood Planning Scheme, I do not consider that the phasing provisions of the planning scheme, including the provision of school infrastructure, precludes the provision of dwellings at the site. Recent planning decisions in the vicinity of the sites indicates that the provision of schools is not a limiting factor to the delivery of development on the basis that negotiations with the Department of Education are ongoing. No 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 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.*

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Sinéad O'Connor

Planning Inspector

Date: 03 October 2024