



An
Bord
Pleanála

Inspector's Report ABP-320383-24

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

Lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15.

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZLT-24-21

Appellants

Castlethorn and its Group Companies

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15 (Parcel ID FL0000002622) are located to the west of the Diswellstown Road and south of the Dublin to Sligo railway line. As per Figure 1 of the submission to the LA, the subject site is in 2 no. adjoining parts. The lands are irregular in shape and are currently under grass. The site partially wraps around, but excludes, the adjoining playing pitch. The lands to the south and east of the site are in residential use and the lands to the west are in agricultural use. The Scoil Choilm Community National School is to the south of the site.

2.0 Zoning and Other Provisions

The relevant plan is the Fingal County Development Plan 2023-2029.

- The site is zoned RA-Residential Area. to provide for new residential communities subject to the provision of the necessary social and physical infrastructure.
- Residential is listed as permitted in principle on zoned RA lands, as per page 499 of the Plan.
- There is a mapped objective to provide Traveller Accommodation at the western side of the site.
- Indicative LAP Walking / Cycle Routes are mapped across the site.
- The site is subject to a Local Area Plan under mapped objective LAP 13.B. Table 2.15 'Operational LAPs' lists the Kellystown LAP 2021 under LAP 13.B.

The relevant LAP is the Kellystown Local Area Plan, adopted in January 2021:

- The site is within Development Area 1, as per Figure E.1
- Under Figure 5.2, the site accommodates residential development and the indicative location of a future train station or metro west node.
- Kep Objective DA 1.1: Provide for the relocation of St. Mochta's Football Club to an appropriate site in the Open Space Area in the southern portion of the LAP land bank in close proximity to the existing schools campus. The relocated facilities shall be constructed and finished on site by the developer to a suitable standard to be

agreed with Fingal County Council prior to the re-development of the existing St. Mochta's Football Club site.

3.0 Planning History

PA Ref. RZLT033/22, ABP Ref. 316770: On the 14 June 2023 the Board decided to confirm the determination of the local authority and include the site on the RZLT map.

SHD Application ABP-312318-21: The southern section of the site forms part of this application. On the 2 March 2023 planning permission was granted for the construction of 349 no. residential units and ancillary site works. As per the LA assessment, a commencement notice for part of this permission was lodged 11 March 2024.

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 essential infrastructural works are required under the LAP to support development, the northern part of the site does not have access to roads or water infrastructure and the development of the site is dependent on the relocation of St. Mochta's FA.

5.0 Determination by the Local Authority

The local authority determined that:

In pursuance of its functions under the above-mentioned Act, as Planning Authority, the County Council for the County Fingal decided to include the above land on the final map of the Residential Zoned Land Tax for the reasons outlined overleaf.

Reason:

It has been determined that the site in question fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1992 (as introduced by the Finance Act 2021) for inclusion on the RZLT map for the following reasons:

- 1) The land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a 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 development and for which there is services 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 of archaeological or historic remains.
- 4) The existing non-residential use of the lands that are the subject of the submission are not considered to benefit for the exclusions set out in the Finance Act 2021 at Section 653B(c).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Environmental infrastructure works are required prior to development of the lands, as per Table 12.1 of the LAP.
- The permitted residential development at the south of the site is in Phase 4 of the construction schedule and is reliant on earlier phases for road infrastructure.
- The northern portion of the site does not have the benefit of planning permission and is not serviced by road or water infrastructure.
- The UE submission refers to a connection point at Woodbrook Square, 75 metres from the site. Third Party, LA and UE cooperation would be required to provide a connection to the site.
- As per Objective DA1.1 of the LAP, development of the site is precluded until such time as St. Mochta's FC facilities are relocated. The lands of the St. Mochta's FC are under the control of the LA.

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 subject site, as shown in Map 1 of the appeal statement, was the subject of a previous RZLT determination under ABP-316770. Under ABP-316770, the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. The context and character of the site has not significantly changed since this previous determination.

The site is zoned RA-Residential Area and, therefore, meets the criteria under Section 653B(a) of the Act.

The Grounds of Appeal state that the site is not connected to existing road or water infrastructure. The subject site has direct road frontage onto Diswellstown Road along its eastern and southern boundaries. I note that Diswellstown Road is elevated where it adjoins the northern portion of the site however, the appellant controls the lands at the south of the site that are currently accessed from Diswellstown Road. In this way, it is reasonable to consider that the full extent of the landholding can be accessed from Diswellstown Road via the southern parts of the site.

The UE submission to the LA dated 29 April 2024 indicates that there is a potable water network at the Diswellstown Road, which has capacity to serve the site. This submission further states that there is an existing public sewer located circa 75 metres

to the east of the site that also has capacity to serve the lands. The development at Woodbrook Square adjoins Diswellstown Road and, therefore, it is reasonable to consider that third-party consents would not be required to connect to the UE infrastructure at this location. Further to the above, I consider that the northern portion of the site can connect to water infrastructure provided in support of planning permission ABP-312318-21, which is partially under the control of the appellant. Drawing from the above, it is reasonable to consider that a connection to water infrastructure may be provided to the northern part of the lands. In light of the foregoing, I consider that the site meets the criteria under Section 653B(b) of the Act.

The appellant states that the subject site is precluded from development with reference to the LAP, which requires the provision of infrastructure. Under the LAP, the subject site is designated for residential development as part of Development Area 1. I note that the Table 12.1 lists the works the “*shall be provided in the first phase of development*”. Neither the LAP or the Development Plan includes a specific policy or objective to preclude development until these infrastructure works are initiated or completed. This is evidenced by the fact that development was permitted, and has purported to have commenced, under Ref. ABP-312318-21. The lands are zoned RA-Residential Area for the provision of new residential communities under the Development Plan and no phasing arrangements apply that would prevent or preclude development, therefore, the site meets the criteria under Section 653B(a) of the Taxes Consolidation Act 1997, as amended.

The appellant states that development at the site is precluded until the St. Mochta’s FC facilities are relocated. Key Objective DA1.1 of the LAP states that the existing facilities shall be relocated prior to the development of the lands currently occupied by St Mochta’s FC. I note that the subject site does not include the playing pitches at St. Mochta’s FC and is, therefore, not subject to the provisions of Key Objective DA1.1. It is my opinion that the location of St. Mochta’s FC immediately adjoining the subject site do not preclude the provision of dwellings at the site.

There are no other physical conditions at the site that would preclude the provision of dwellings, therefore, the site meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15 (Parcel ID FL0000002622) 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 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

The lands identified as lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15 (Parcel ID FL0000002622) are located on lands zoned RA-Residential Area and are, therefore, considered in scope of section 653B(a). The site immediately adjoins the Diswellstown Road and, therefore, it is reasonable to consider that the site can connect to the road network. Correspondence from UE confirms that the site can connect to existing water infrastructure, and that there is capacity in the system to serve the site. The subject site does not contain the lands of St. Mochta's FC, therefore, development at the site is not predicated on the relocation of these sports facilities. The location of the site immediately adjoining St. Mochta's FC does not preclude the provision of dwellings at the site. No physical constraints 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: Fingal County Council

Local Authority Reference Number: FIN-C657-RZLT-24-21

Appeal by Castlethorn and its Group Companies care of Stephen Little & Associates 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 xxxx Council on the 27 day of June 2024 in respect of the site described below.

Lands at: lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15

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 lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15 (Parcel ID FL0000002622) on the final map.

Reasons and Considerations

The lands identified as lands at St. Mochta's, Porterstown, Clonsilla, Dublin 15 (Parcel ID FL0000002622) are located on lands zoned RA-Residential Area and are, therefore, considered in scope of section 653B(a). The site immediately adjoins the Diswellstown Road and, therefore, it is reasonable to consider that the site can connect to the road network. Correspondence from UE confirms that the site can connect to existing water infrastructure, and that there is capacity in the system to serve the site. The subject site does not contain the lands of St. Mochta's FC, therefore, development at the site is not predicated on the relocation of these sports facilities. The location of the site immediately adjoining St. Mochta's FC does not preclude the provision of dwellings at the site. No physical constraints 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 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.

Sinéad O'Connor

Planning Inspector

12 September 2024