



An
Bord
Pleanála

Inspector's Report ABP-320393-24.

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

Location

Flemington Lane, Balbriggan, Co. Dublin

Local Authority

Fingal County Council.

Local Authority Reg. Ref.

FIN-C657-RZT 24-25A

Appellant

Dean Swift Property Holdings Limited Company

Inspector

Fergal Ó Bric

1.0 Site Description

The appeal lands identified as FIN-C657-RZT 24-25A and Parcel ID number FL0000002197 (part of). The lands comprise a stated area of 19.2 hectares of land within the designated settlement boundary of Balbriggan, to the west of the town.

2.0 Planning Policy & Zoning

- 2.1. Balbriggan is identified as a 'Self Sustaining Town'. The site is zoned RA-Residential area in the current Fingal Development Plan 2023-2029 where the zoning objective is "To provide for new residential communities subject to the provision of the necessary social and physical infrastructure".
- 2.2. The 'vision' for 'RA – Residential Area' zoning is 'Ensure the provision of high quality new residential environments with good layout and design, with adequate public transport and cycle links and within walking distance of community facilities. Provide an appropriate mix of house sizes, types and tenures in order to meet household needs and to promote balanced communities'. Use classes permitted in principle include 'residential', 'childcare facilities', and various 'retail' uses.

3.0 Planning History

3.1. Site

PA reference LRD0006/21-In February 2024 Fingal County Council refused planning permission for a development of 564 residential units and associated site services. This decision was appealed by the applicants to An Bord Pleanála under 319343 and the Board overturned the decision of the Planning Authority and granted planning permission on the 4th day of July 2024, subject to 31 planning conditions.

PA reference F08A/1329 / ABP Reg. Ref. PL 06F.235048 – In 2010, the Board attached, removed and amended a number of conditions relating to a ten-year grant of permission for 532 no. residential units (281 no. houses and 151 no. apartments), the C-Ring and Boulevard, class 1 public park, and urban square etc. on a 29 hectares site. The development represents phase 2 of the development of

the lands (07A/1249 being phase 1). The permission was extended to 23rd February 2025 under F08A/1329/E1. Folkstown Park / Ladywell (under construction adjacent to the south east)

PA reference F22A/0670 – In 2023 the local authority granted permission for phase 3C, and roads, services, and public spaces relating to the overall phase 3 Ladywell Masterplan, comprising 75 no. residential units (68 no. houses and 7 no. triplex and maisonette apartments), 1.34 hectares public open space (phase 3C 0.38 hectares), communal open space, 0.65 hectares Class 1 open space, roads and services, upgrade of Boulevard Road and Clonard Road/R122 etc.

PA reference F22A/0526 – In 2023 the local authority granted permission for a tenyear permission for phase 3B, and roads services, and public spaces relating to the overall phase 3 Ladywell masterplan, comprising 95 no. residential units (79 no. houses and 16 no. 1-bed maisonettes), 1.34 hectares public open space, communal space, Class 1 public open space of 0.65 hectares, roads and services, upgrade of the Boulevard / Clonard Road (R122) junction) etc.

PA reference F21A/0055 / ABP Reg. Ref. ABP-312048-21 – In 2023 the Board granted permission for phase 3A, and roads, services, and public spaces relating to the overall phase 3 Ladywell Masterplan, comprising 99 no. residential units (73 no. houses, 16 no. duplex apartments, 6 no. triplex apartments, and 4 no. maisonette apartments), open space including class 1 open space, roads and services infrastructure etc.

4.0 Submission to the Local Authority

The appellants raised the following issues:

- The appellants set out that Fingal County Council recently refused planning permission on the lands for a large scale residential development (564 residential units) and that the decision is under appeal to the Board (319343-24).

- The submission of a planning application demonstrates the appellants commitment to the development of the lands to provide residential units within an area that is well served.
- The payment of the RZLT would incur costs on the land owners which may negatively impact the viability of the development of the site.

5.0 Determination by the Local Authority

The local authority determined that the site in question fulfils the criteria set out in Part 22A of the Taxes Consolidation Act 1997, as amended for inclusion on the RZLT map for the following reasons:

- 1) The land is included in a Development Plan or a 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 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

- The appeal acknowledges that the lands in question are zoned in the Fingal Development Pan for residential purposes and that the lands are serviced or it is reasonable to consider may have access to services.
- The appeal submission also recognises are not affected in terms of their physical condition to such an extent that would preclude the provision of

dwellings, including contamination or the presence or archaeological or historic remains.

- The appellants set out that the Board recently granted planning permission for an LRD development on the lands and that they intend to construct the development in the future. However due to the scale of the proposals and the number of conditions to be compiled with, the development will not be completed for some time. Given that planning permission has been granted, the lands will be activated and contribute a significant number of housing units to the area.
- The payment of the RZLT would place a financial strain on the appellants.

7.0 Local Authority submission

The local authority made no comment in relation to this appeal.

8.0 Assessment

8.1 The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned RA-Residential Area in the Fingal County Development Plan 2023-2029. The local Authority determined that the lands are in scope and that they remain on the RZLT map. The site is within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.

8.2 The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 of the RZLT Guidelines set out the following:

iii) Services to be considered of the guidelines state that *“in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road,*

or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in-scope".

8.3 Section 4.1.1 ii) Review of land with planning permission of the guidelines states that *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....Significant works by the applicant to undertake the development which are a part of the plans and particulars lodged as a part of the permitted development should be given careful consideration in light of Section 4.1.1.(iii) of these Guidelines.*

8.4 Of relevance, I note that the site has been the subject of a recent grant of planning permission ABP 319343-24 (LRD) - Permission granted to Dean Swift Property Holdings Limited Company on 04/07/2024 for a development of 564 no. residential units. I have reviewed the conditions attached to this grant of planning permission and note there is no specific condition relating to wastewater upgrades or constraints that would preclude development coming forward on the site.

8.5 The Planning Authority within their assessment have set out that the site is serviceable in terms of roads, footpaths, public lighting, water supply, wastewater and surface water infrastructure. The appellants themselves acknowledge within their appeal submission that the site has access to services serviced or it is reasonable to consider may have access to services. On this basis, it is reasonable to consider that there is some capacity in the wastewater network to cater for development.

8.6 While I note that a planning permission was recently granted within the subject lands by the Board for a large scale residential development, having regard to the foregoing, it is apparent that the site does not qualify for an exemption under section 653B of the Taxes Consolidation Act 1997, as amended.

8.7 The appellants set out that the RZLT would place an undue financial strain on them and hinder their ability to implement their planning permission. This is not one of the

grounds for exemption from the RZLT as set out within Section 653B (c) of the Taxes Consolidation Act 1997, as amended.

8.8 Based on the information submitted, I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B.

8.9 The appeal grounds do not raise any other matters that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines.

9.0 Recommendation

9.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the final RZLT map.

10.0 Reasons and Considerations

10.1. The lands identified as FIN-C657-RZT 24-25A and Parcel ID number FL0000002197 (part of). Are located on residentially zoned lands identified within the current Fingal County Development Plan are considered in scope of Section 653B of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area with services available, have the benefit of an extant planning permission for a large scale residential development and 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.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Fingal County Council

Local Authority Reference Number: FIN-C657-RZT 24-25A

Appeal Dean Swift Property Holdings Ltd. Company 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 Fingal County Council on the 27th day of June 2024 in respect of the site described below.

Lands at: Flemington Lane, Balbriggan, 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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number FL0000002197 (part of). under FIN-C657-RZT 24-25A should be placed on the RZLT map.

Reasons and Considerations

The lands identified as FIN-C657-RZT 24-25A (Parcel ID number FL0000002197 - part of) located on residentially zoned lands identified within the current Fingal County Development Plan are considered in scope of Section 653B(a) of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area with documentary evidence that services are available, have the benefit of an extant planning permission for a large scale residential development and 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.

Fergal Ó Bric
Planning Inspectorate

2nd day of October 2024