



An
Bord
Pleanála

Inspector's Report ABP-320405-24

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 Map

Location

Newcastle South, Newcastle, Co. Dublin

Land Parcel ID

SDLA00111562

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD-C315-3

Appellant(s)

Cairn Homes Properties Limited

Inspector

Paul O'Brien

1.0 Site Location and Description

- 1.1. The appeal lands, identified as Parcel ID SDLA00111562 on the RZLT Final Map, are located to the south western side of Newcastle, Co. Dublin. The lands are located to the west of Graydon Park/ Road and currently undeveloped and under grass. Lands to the north and east are in residential use, lands to the south and west are in agricultural use and are under grass.

2.0 Zoning and Other Provisions

- 2.1. The appeal site is zoned RES-N with an objective 'To provide for new residential communities in accordance with approved area plans.' Residential development is listed as Permitted in Principle. Road's objectives are indicated through sections of the site.
- 2.2. The South Dublin County Development Plan 2022 – 2028 states:
- Objective CS9 SLO3 refers to the lands in the vicinity of the subject site and states the following:
'A sequentially phased programme to be submitted alongside any planning application on the subject lands which provides for the delivery of the following in tandem with development or as described 1) No more than 200 units to be permitted before the commencement of the remaining lands of c. 1.4ha to provide for the full Taobh Chnoic Park to the south 2) Urban Park / Square c. 1ha in size (Burgage South Park) to the satisfaction of the planning authority, 3) East-West Link Street, 4) Sean Feirm Park c. 0.2ha in size, 5) a portion of Tower House Park c. 0.1ha. All applications shall demonstrate to the satisfaction of the Planning Authority how they are supporting the delivery of North South Street connections to the Main Street.
 - With regards delivery of a new primary school at Taobh Chnoic, the timing of this will be subject to educational needs in consultation with the Department of Education. Prior to completion of 200 units confirmation to be provided from the

Department of Education on the transfer of lands to provide for the school, subject to their confirmation of need.'

- 2.3. The site is located within a Site and Monuments Record Zone of Notification (R149425) as per Map no. 7 of the South Dublin County Development Plan, 2022 to 2028.
- 2.4. The site is located within the Architectural Conservation Area (ACA) for Newcastle (Ref. ACA002).

3.0 Planning History

- ABP Ref. 316321-23 refers to an October 2023 decision to confirm the determination of the local authority for the inclusion of these lands on the RZLT Maps.
- ABP Ref. 305343-19 refers to a December 2019 decision to grant permission for a SHD application for the demolition of 5 no. structures, construction of 406 no. residential units (281 no. houses, 125 no. apartments) childcare facility and all associated site works.
- PA Ref. SD23A/0136 refers to a February 2024 decision to grant permission for a residential development of 48 dwellings in the form of apartments/ duplexes and open space, the provision of approximately 1.74 hectares of second phase of Taobh Chnoic public park, hard and soft landscaping, communal amenity space for duplex apartments, along with single-storey bicycle/bin stores and all associated site works. The vehicular access to be from the permitted Graydon development (TA06S.305343) 'Newcastle Boulevard' to the east.
- PA Ref. LRD23A/0011/ ABP Ref. 319500-24 refers to a July 2024 decision to grant permission for the construction of 119 houses, 12 apartments and all associated site works. An Environmental Impact Assessment Report (EIAR) was submitted with this application.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have their lands removed from the Final Map for the following reasons:

- Permission is in place on part of the lands and the provision of the tax may impact on the ability of the homebuilders to develop these lands for housing. The taxing of the land is not aligned with the developer's timescale to activate the permission under PA Ref. SD23A/0136.
- Request that the inclusion on the maps be deferred for a period of 18 months to be able to demonstrate that development is underway.

5.0 Determination by the Local Authority

5.1. The Local Authority determined on the 26th of June 2024:

'To retain Land Parcel SDLA00111562 on the map.

It has been determined that Land Parcel SDLA00111562 fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021), and Amendments to the Taxes Consolidation Act 1997 as a consequence of the enactment of the Finance (No.2) Act 2023, for inclusion on the RZLT map for the following reasons:

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.

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.

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.'

6.0 The Appeal

6.1. Grounds of Appeal

The following points were made in support of the appeal:

- The applicant is required, by conditions attached to the grant of permission for 48 units, to secure approval for a new surface water pipe to an outfall on the Hazelhatch Road, and agreement has not been received to date. As this was not received on the 1st of January 2024, the site should be omitted from the RZLT maps.
- Concern that the ability to commence development can be delayed by between 6 and 18 months. Request that the reasonable timeframe, of 18 months, be provided to enable development of the site.

I note that the second point is headed 'Judicial Review Risk' but no legal risk was raised in the this part of the appeal.

6.2. Planning Authority Response

No further comment made.

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, 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 zoned for residential use and therefore within scope of section 653B(a). The Planning Authority determined that the site remain on the RZLT map.
- 7.3. The comments made in relation to agreement for connection to the surface water system are a Development Management issue and can be addressed between the developer and the local authority. This is an issue that can be overcome. The Planning Authority have reported that there is adequate capacity in necessary public services, including surface water drainage, to serve this site.
- 7.4. The issue of delay in the building process is one for the developer/ appellant to address. This is not a criterion for exemption/ removal from the final map.
- 7.5. I am of the view that the land satisfies criteria 653B (b) of the Taxes Consolidation Act 1997, as amended, and that it is serviced or has access to services necessary for dwellings to be developed and with sufficient service capacity available for such development, as clarified by Uisce Éireann. As such the lands has development potential.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I consider that the lands identified as Parcel ID SDLA00111562 on the RZLT Final Map meets 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.

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 Parcel ID SDLA00111562 on the RZLT Draft Map zoned RES - N - 'New Residential' are considered to be within scope of Section 653B(a). The lands are located within an established urban area. 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. Any delay in activating the grant of permission for the development of these lands is an issue for the developer to address.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: South Dublin County Council

Local Authority Reference Number: SD-C315-3

Appeal by Cairn Homes Properties Limited 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 South Dublin County Council on the 26th day of June 2024 in respect of the site described below.

Lands at: Newcastle, 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 Parcel ID SDLA00111562 on the final map.

Reasons and Considerations

The lands identified as Parcel ID SDLA00111562 are zoned 'RES-N - New Residential' and are considered to be in scope of section 653B(a)(i). The lands are located within an established urban area. 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.

Paul O'Brien

Inspectorate

17th September 2024