



An
Bord
Pleanála

Inspector's Report ABP-320424-24

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 Woodbrook, Shankill, Co. Dublin

Local Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

DM24/0014

Appellant

Aeval Unlimited Company

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Lands at Woodbrook, Shankill, Co. Dublin (Parcel ID DELA00002227) are located to the south of Shankill on the eastern side of the Dublin Road (R119). The lands contain an active construction site. To the north, the site adjoins the Shanganagh Cemetery and Crinken Church, and to the south the site adjoins the rear of properties fronting Woodbrook Road. To the east, the site adjoins Woodbrook Golf Club and to the west is low density residential development.

2.0 Zoning and Other Provisions

The relevant plan is the Dún Laoghaire-Rathdown County Development Plan 2022-2028:

- The lands are zoned A1- To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans.
- As per Table 13.1.3, Residential is permitted in principle on zoned A1 lands.
- Table 2.9 states that Woodbrook-Shanganagh contains Tier 1 and Tier 2 lands however, the extent or location of these Tier 1 and Tier 2 areas is not mapped.
- Section 2.3.7.2 states that *“Tier 1 lands are serviced, and in general, part of or contiguous to the built-up footprint of an area. Tier 2 lands are not currently sufficiently serviced to support new development but have potential to become fully serviced within the lifetime of the Plan. Tier 2 lands may be positioned within the existing built-up footprint, or contiguous to existing developed lands, or to Tier 1 zoned lands”*.
- Table 9 ‘New Residential Community: Woodbrook-Shanganagh’ of Appendix 1: ‘Tiered Approach to Land Zoning – Infrastructure Assessment’ identifies the Woodbrook-Shanganagh area as Tier 1/ Tier 2 based on the UE programme for wastewater upgrades. This table further states that *“interim solution possible to facilitate part build out”*.
- There are several areas across the site that are subject to the mapped objective *“To protect and preserve Trees And Woodlands”*.

- There is a mapped objective for a Proposed Education Site to in the northwest corner of the site.
- Specific Local Objective 103 is located in the centre of the site and seeks “ *To accord with the policies of the adopted Woodbrook/ Shanganagh Local Area Plan*”.
- Specific Local Objective 111 is located to the east of the site and seeks “*To provide a Dart Station at Woodbrook*”.
- The mapped ‘6 Year Road Objectives/Traffic Management/Active Travel Upgrades’ in respect of the Woodbrook/ Shanganagh Access Road traverses the subject site.

The subject site is located within the area of the Woodbrook - Shanganagh LAP 2017-2023. This LAP was extended up to 10 October 2027.

- Table 14 ‘Phasing Schedule for Woodbrook’ of the LAP sets out the phasing schedule for the Woodbrook lands. The programme relates solely to infrastructure delivery by UE, the NTA, the LA and the developer. Table 14 does not impose any phasing sequence on the development of the lands and does not designate any part of the lands Phase 1/Phase 2 or Tier 1/ Tier 2.

3.0 Planning History

SHD application ABP Ref: 305844-19: On 27 February 2020 planning permission was granted for 685 no. residential units (207 no. houses, 478 no. apartments), creche and associated site works. Works in respect of this permission have commenced on-site.

PA Ref. DM22-0040, ABP Ref.316637-23: On the 23 October 2023, the Board confirmed the determination of the local authority to retain the subject site on the RZLT map.

LRD24A/0382/WEB: On 31 May 2024 a planning application was lodged for the second phase of development at Woodbrook, including the provision of 479 no. dwellings. On the 19 July 2024, the local authority issued a request for Further Information. A final decision on this application has not been made.

LRD24A/0482/WEB: On 28 August 2024, planning permission was granted for amendments to the SHD permitted under ABP Ref.316637-23 including the provision of 35 no. additional units

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 lands were not serviceable on 01 January 2024 as the Woodbrook Phase 1 wastewater works had not been completed by this date, and that Woodbrook Phase 1 is under construction.

5.0 Determination by the Local Authority

The local authority determined that:

By Order dated 25 June 2024 it was decided to include the above land on the final map of the Residential Zoned Land Tax for the following reason(s).

1. The land is zoned solely or primarily for residential use.
2. 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.
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.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The appellant has sought to develop the subject site for the past 15 years.
- The appellant opposes the tax.
- The site was not served by permanent wastewater infrastructure on 01 January 2024. Significant works are required to the wastewater system, which are not under the control of the appellant.

- The site includes Tier 2 lands, which are not currently connected to services.
- The Woodbrook DART station was not in place 01 January 2024 and will not be operational until Q3 2025. The DART station is on lands that are not under the control of the appellant.
- Development of the site is subject to the phasing provisions of the LAP.

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. DM22-0040, ABP Ref.316637-23. Under this previous appeal, the Board confirmed the determination of the LA to retain the site on the RZLT map. The inspectors report under ABP Ref. 316637 concluded that the site is serviceable in respect of water supply, wastewater, public transport and roads. The character and context of the site has not significantly changed since this previous determination.

The lands are zoned A1- 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans' and therefore meet the criteria under Section 653B(a) of the Act.

The appellant states that the site was not serviced on 01 January 2024 and includes Tier 2 lands that do not meet the criteria for inclusion on the RZLT map. I note that

neither the Development Plan nor the LAP describes or maps those parts of the Woodbrook – Shanganagh development area that are Tier 1 or Tier 2. Table 9 of Appendix 1 of the Development Plan states that Woodbrook – Shanganagh comprises Tier 1 and Tier 2 areas on the basis of a UE wastewater extension project however, it is stated that an interim solution may be possible to facilitate development of the LAP lands. In this regard, the UE submission to the LA dated 02 May 2024 states that the subject site can connect to the interim rising main on Woodbrook Avenue and that there is an existing 600mm trunk sewer located at the eastern boundary of the site at the R119. As per the documentation submitted, I note that the permanent rising main to serve area was not complete on 01 January 2024 however, there was and is sufficient capacity in the interim rising main to serve development at the subject site. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 25 September 2024) indicates that there is spare capacity available at the Shanganagh WWTP. On the basis of the information submitted and drawing from the definition of Tier 1 lands in the Development Plan, I consider that the full extent of the subject site comprises Tier 1 on the basis that it is serviced. In this regard, the subject site meets the criteria under Section 653B(b) of the Act.

The UE submission to the LA dated 02 May 2024 states that the site is able to connect to the existing potable water network on Woodbrook Avenue. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 25 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. In this regard, it is reasonable to consider that the site can connect to potable water infrastructure and that there is sufficient capacity to serve the site.

The site is located immediately adjoining the R119 and is currently accessed from this public road. Woodbrook Avenue traverses the site and was constructed as part of Woodbrook Phase 1. This road is located in the appellants land and will ultimately provide a connection between the R119 and Woodbrook DART station. Based on the foregoing, it is reasonable to consider that the site is able to connect to road infrastructure and that there is sufficient capacity on the new and existing network to serve the site. The submission made by the NTA to the LA dated 09 May 2024 states

that the Woodbrook DART station is under construction and is due for completion Q2 2025. I note that the lands of the DART station are under the control of the LA. Page 24 of the RZTL Guidelines states that where infrastructural works are required to serve a site the subject site should remain in-scope where the necessary lands are under control of the local authority. In this regard, the site meets the transportation criteria under Section 653B(b).

The appellant states that development of the site is subject to the phasing provisions of the LAP. Table 14 of the LAP provides a phasing schedule infrastructural development to serve development at Woodbrook. I note that the LAP does not designate any part of the site as Phase 1 or Phase 2 and instead, Table 14 lists infrastructure works to be undertaken by UE, TII, NTA, the LA and the developer to ensure the provision of development in tandem with necessary infrastructure. The projects listed in Table 14 are to be undertaken by public bodies or by the developer, therefore, no third- party lands or consents are required for these works to be undertaken. As per Page 24 of the RZLT guidelines, which refers to works by public bodies on public lands, the subject site remains in-scope for inclusion on the RZLT map. Further to the above, Section 5.4 of the LAP states that the phasing schedule is flexible and seeks primarily to ensure infrastructure is provided to serve future development. As is discussed elsewhere in this report and as per the information submitted, the full extent of the site is serviced and comprises Tier 1 lands. In this way, it is reasonable to consider that the phasing provisions of the LAP do not preclude the provision of dwellings at the site.

With reference to the provisions under Section 653(c) of the Act, there are no physical conditions or constraints at the site that would preclude the provision of dwellings at the site. In this regard, the site meets the criteria for inclusion in the RZLT map.

There is a mapped objective to provide a school at the northwest corner of the site. Page 11 of the RZLT guidelines states the following: *“Where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out”*. The exact location and extent of the proposed school is not mapped in the Development Plan or LAP therefore, it is reasonable that the full extent

of the lands is retained in the RZLT map.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Lands at Woodbrook, Shankill, Co. Dublin (Parcel ID DELA00002227) 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

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 identified as Lands at Woodbrook, Shankill, Co. Dublin (Parcel ID DELA00002227) located on lands zoned A1- 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans' and therefore meet the criteria under Section 653B(a) of the Act. Neither the Development Plan nor the LAP maps any part of the subject site as Tier 1/Tier 2 or Phase 1/Phase 2. Table 9 of Appendix 1 of the Development Plan identifies the Woodbrook-Shanganagh development area as Tier 1/ Tier 2 based on UE wastewater upgrades but states that an interim solution may facilitate build-out of the lands. The UE submission to the LA states that there is capacity in the interim wastewater rising main on Woodbrook Avenue to serve the subject site, therefore, the site constitutes Tier 1 on the basis that it is serviced. As per the submission from UE to the local authority, and with reference to the UE capacity registers published June 2023, it is reasonable to consider that the site can connect to and be served by the existing potable and foul water network. The site immediately adjoins the R119 and Woodbrook Avenue has been completed as part of Woodbrook Phase 1. The

submission from the NTA states that the Woodbrook DART station will be completed Q2 2025. Drawing from the foregoing, the site meets the criteria under Section 653B(b) of the Act. The phasing provisions of the LAP relate solely to infrastructure to be provided by public bodies and the developer and seek to align infrastructure provision with development. On the basis that the full extent of the site is Tier 1 serviced land, it is reasonable to consider that the phasing provisions of the LAP do not preclude the provision of dwellings on the site. There are no physical conditions or constraints at the site that would preclude the provision of dwellings at the site. In this regard, the site meets the criteria under Section 653B(c). The lands include an objective to provide a school. On the basis that the extent of the proposed school is not mapped, it is reasonable to retain the full extent of the site on the RZLT map.

Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dun Laoghaire Rathdown County Council

Local Authority Reference Number: DM24/0014

Appeal by Aeval Unlimited Company care of Stephen Little and 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 Dun Laoghaire Rathdown County Council Council on the 25 day of June 2024 in respect of the site described below.

Lands at: Lands at Woodbrook, Shankill, 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 Lands at Woodbrook, Shankill, Co. Dublin (Parcel ID DELA00002227) 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 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 identified as Lands at Woodbrook, Shankill, Co. Dublin (Parcel ID DELA00002227) located on lands zoned A1- 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans' and therefore meet the criteria under Section 653B(a) of the Act. Neither the Development Plan nor the LAP maps any part of the subject site as Tier 1/Tier 2 or Phase 1/Phase 2. Table 9 of Appendix 1 of the Development Plan identifies the Woodbrook-Shanganagh development area as Tier 1/ Tier 2 based on UE wastewater upgrades but states that an interim solution may facilitate build-out of the lands. The UE submission to the LA states that there is capacity in the interim wastewater rising main on Woodbrook Avenue to serve the subject site, therefore, the site constitutes Tier 1 on the basis that it is serviced. As per the submission from UE to the local authority, and with reference to the UE capacity registers published June 2023, it is reasonable to consider that the site can connect to and be served by the existing potable and foul water network. The site immediately adjoins the R119 and Woodbrook Avenue has been completed as part of Woodbrook Phase 1. The submission from the NTA states that the Woodbrook DART station will be completed Q2 2025. Drawing from the foregoing, the site meets the criteria under Section 653B(b) of the Act. The phasing provisions of the LAP relate solely to infrastructure to be provided by public bodies and the developer and seek to align infrastructure provision with development. On the basis that the full extent of the site is Tier 1 serviced land, it is reasonable to consider that the phasing provisions of the LAP do not preclude the provision of dwellings on the site. There are no physical conditions or constraints at the site that would preclude the provision of dwellings at the site. In this regard, the site meets the criteria under Section 653B(c). The lands include an objective to provide a school. On the basis that the extent of the proposed school is not mapped, it is reasonable to retain the full extent of the site on the RZLT map.

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

Date: 03 October 2024