



An  
Bord  
Pleanála

## Inspector's Report ABP-320448-24

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### 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

Lands at Priorsland, Glenamuck Road North, Carrickmines, Dublin 18

### Planning Authority

Dun Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

DM24/0004

### Appellant(s)

Mairead Smith

### Inspector

John Duffy

## **1.0 Site Location and Description**

- 1.1. The appeal lands, identified as Parcel IDs DELA00000016 and DELA00000042 on the RZLT Final Map are located to the north-west within the Cherrywood Strategic Development Zone (SDZ) area, on the eastern side of Glenamuck Road North, immediately south of the Luas Green Line and north the Carrickmines exit on the M50 (Exit 15). The lands accommodate a residential dwelling.

## **2.0 Zoning and Other Provisions**

- 2.1. The subject lands are designated Residential / Residential Protected Structures within the Cherrywood Planning Scheme and are therefore zoned solely or primarily for residential use.
- 2.2. Objective C69 applies to the lands and states: To implement and develop the lands at Cherrywood in accordance with the adopted Strategic Development Zone Planning Scheme (SDZ), (as amended).

## **3.0 Planning History**

### RZLT Appeal (subject site)

An Bord Pleanála Ref. ABP-316589-23 / Planning Authority Ref. DM22/0003 refers to a November 2023 decision to confirm the determination of the local authority to include lands at Priorsland, Glenamuck Road North, Carrickmines, Dublin 18 on the RZLT MAP.

### Concurrent RZLT appeals on Cherrywood lands

An Bord Pleanála Ref. ABP-320378-24 / Planning Authority Ref. DM24/0017 in respect of the following plots included in the Planning Scheme: DM5, TC5 and DM4.

An Bord Pleanála Ref. ABP-320384-24 / Planning Authority Ref. DM24/0015: Range of lands within the Cherrywood Planning Scheme Area, as follows: L1 and L2 – Growth Area 2 – Development Area 1; TC5 and TC6 – Growth Area 1 – Development Area 2; P7 – Growth Area 3 – Development Area 3; T1, T3, T5, T13 – Growth Area 3 – Development Area 8.

## Proposed Amendment to Cherrywood Planning Scheme 2014, as amended

An Bord Pleanála Ref. ZF06D.317574 – Proposed Amendment No. 9 of the Cherrywood Planning Scheme 2014 (as amended) relating to residential car parking standards (Section 4.2.10 of the Approved Planning Scheme, 2014 as amended). No decision to date.

### **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 on the following grounds:

- RZLT should not apply within SDZ areas.
- The lands have been unlawfully divided into two separate parcels and the map should be amended to consolidate the two entries.
- The subject land is not a relevant site.
- The newspaper notice relating to RZLT as published is invalid.
- The lands should not have been included in the map before judicial review proceedings challenging the validity of the 2023 Board decision are concluded.

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

5.1. The Local Authority determined that the site is in scope for the following reasons:

- The land is zoned solely or primarily for residential use.
- 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.
- 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 following points are made in support of the appeal:

1. The Smith land is unlawfully included on the Draft Map and the Draft Map must be amended so that the Smith land is not included.

- The lands do not satisfy the relevant criteria required by section 653B.
- The lands do not constitute land included or zoned in a development plan in accordance with the Planning and Development Act 2000, zoned solely or primarily for residential use.
- The zoning objectives affecting the lands are neither made nor set out in the Dun Laoghaire Rathdown County Development Plan 2022-2028.
- The conclusion of the Local Authority that the lands are included in the Development Plan in accordance with section 10(2)(a) of the Planning and Development Act 2000, are wrong. Reference is made in the evaluation report to section 169 of the 2000 Act. The Local Authority appears to have been wrongly influenced in its decision by the 2022 Guidelines from the Department of Housing, Planning and Local Government which have no legal status.

- It is not open to the Local Authority to seek to widen the scope of the relevant tax charging provision by inferring certain lands may be included on the Draft Map even though this is not expressly stated in the relevant statutory provision.
- The issuing of the Section 28 Guidelines is ultra vires and they are null and void with no legal effect. It is not legally permissible for the Local Authority or Board to use or have regard to the 2022 Guidelines to justify the inclusion of the lands on the map.

2. The Smith land is unlawfully divided into two parcels on the Draft Map, which should be amended to show the lands as a single undivided site.

- All of the Smith land is used and enjoyed by the dwelling on the land.
- There is no legal basis under the legislation for dividing land deemed to satisfy the relevant criteria into separate sites by reference to permitted uses in a planning scheme.
- The Smith land is not a relevant site for the purposes of Part 22A of the TCA 1997. By virtue of section 653(O)(2) none of the lands are a relevant site and there is no legal basis or logic for dividing it into two parcels.
- The Smith land is unlawfully being treated differently to other landholdings in close proximity. The Local Authority did not address this matter.
- Request that An Bord Pleanála, without prejudice to the grounds of appeal, require amendment to the Draft Map to properly clarify that the two parcels of land identified constitute one site for the purposes of the Taxes Consolidation Act 1997.

The appeal includes the following attachments:

- Map of site
- Notification of Determination
- Local Authority Assessment

## 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 I acknowledge the views of the appellant in relation to the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 as expressed in the appeal, along with the opinion that the lands do not constitute land included or zoned in a development plan in accordance with section 10(2)(a) of the Planning and Development Act 2000, zoned solely or primarily for residential use.

The Guidelines were introduced under section 28 of the Planning and Development Act 2000, as amended, in order to provide assistance to local authorities, An Bord Pleanála and other stakeholders in the process of mapping the land which will be subject to the tax. The legislative basis for the RZLT Guidelines is not for consideration in this appeal, as An Bord Pleanála is restricted to assessing whether the appeal lands meet the qualifying criteria set out in section 653B.

- 7.3 Section 3.1.1 of the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 sets out 'Criteria for Inclusion within the Scope of the Tax Measure' and states the following:

'To satisfy the criteria as identified in section 653B, land must be zoned residential use or for mixed uses including residential within a Development Plan, Strategic

Development Zone Planning Scheme or a Local Area Plan. This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed use zonings where residential developments are permitted in principle.'

The subject lands comprising Parcel IDs DELA00000016 and DELA00000042 are designated 'Residential Protected Structures' and 'Residential' respectively within the Cherrywood Planning Scheme.

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion 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 subject lands are zoned Residential and are considered within the scope of section 653B(a).

- 7.4 Having regard to section 653B(b) both land parcels are within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities for dwellings to be developed and with sufficient service capacity for such development.
- 7.5 In terms of section 653B(c) it is reasonable to consider that the land parcels are not affected, in terms of their physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains. The land parcels do not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.
- 7.6 The appellant considers that the lands have been unlawfully divided into two separate parcels and requests the board to confirm that the lands constitute one site only. Reference is also made in the appeal that by dividing the land into two separate parcels, the land has been unlawfully treated differently to other landholdings in the area. Reference is also made in the appellant's submission that the lands should not be included in the draft map before judicial review proceedings challenging the decision made in 2023 to include the lands in the map are concluded. These matters fall outside the scope of the appeal process as they do not relate to the criteria set out in section 653B, and therefore are not for the consideration by the Board.

7.7 The appellant contends that the appeal lands are not a relevant site and that all the lands are enjoyed by the dwelling on the land. In this context, page 8 (Section 3.1.1) of the RZLT Guidelines notes the following:

‘Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation).’

Having regard to the foregoing it is considered that both land parcels should remain on the map. While I note that owners of residential properties within housing estates or individual houses will not be liable for the tax, under section 653J 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 for inclusion on the RZLT map. The legislation does not give the board a role in determining whether a site is a ‘relevant site’ by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. This position is consistent with the Guidelines at section 3.3.2 which state 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.” Whether the site complies with section 653O or not, does not fall within the remit of this appeal. The role of An Bord Pleanála in this instance, as previously stated, is restricted to considering compliance with the qualifying criteria set out in section 653B.

## 8.0 Recommendation

Having regard to the foregoing I consider that the lands identified as Parcel IDs DELA00000016 and DELA00000042 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and,



therefore, I recommend that the Local Authority determination be confirmed and the lands retained on the 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 IDs DELA00000016 and DELA00000042 on the RZLT Final Map designated ‘Residential Protected Structures’ and ‘Residential’ within the Cherrywood Planning Scheme respectively, are considered to be within scope of Section 653B(a). The lands are located within an established urban area and have access onto existing road infrastructure or access could be provided. 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 designation that applies to these lands. The legislation does not give the board a role in determining whether a site is a ‘relevant site’ by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. Matters relating to, inter alia, the division of the land and that the land has been treated differently to other landholdings are outside the scope of the appeal process.

## **10.0 Recommended Draft Board Order**

**Taxes Consolidation Act 1997 as amended**

**Planning Authority: Dun Laoghaire Rathdown County Council**

**Local Authority Reference Number: DM24/004**

**Appeal** by Mairead Smith 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 25<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Priorsland, Glenamuck Road North, Carrickmines, Dublin 18

**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 IDs DELA00000016 and DELA00000042 on the final map.

### **Reasons and Considerations**

The lands identified as Parcel IDs DELA00000016 and DELA00000042 on the RZLT Final Map designated 'Residential Protected Structures' and 'Residential' within the Cherrywood Planning Scheme respectively, are considered to be within scope of Section 653B(a). The lands are located within an established urban area and have access onto existing road infrastructure or access could be provided. 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 designation that applies to these lands. The legislation does not give the board a role in determining whether a site is a 'relevant site' by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. Matters relating to, inter alia, the division of the land and that the land has been treated differently to other landholdings are outside the scope of the appeal process.

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.

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John Duffy  
Planning Inspector

10<sup>th</sup> October 2024