



An
Bord
Pleanála

Inspector's Report ABP-320461-24

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

Former Blakes and Esmonde Motor Site, Stillorgan, Co. Dublin

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

DM24/0005

Appellant(s)

Cairn Homes Properties Ltd.

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The brownfield site, broadly triangular in configuration, adjoins the N11, the Lower Kilmacud Road (R825) and the Hill in Stillorgan, Co. Dublin. No structures remain on the lands and hoarding encompasses the site.
- 1.2. The lands comprise Parcel ID DELA00002268 on the RZLT map.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are zoned Objective DC – District Centre in the Dun Laoghaire Rathdown Development Plan 2022-2028. This zoning objective seeks ‘To protect, provide for and-or improve mixed-use district centre facilities.’ The lands are zoned for a mixture of uses including residential use.
- 2.2. The lands are within the boundary of the Stillorgan Local Area Plan (LAP) 2018-2024, and are identified as a Key Development Site and a Regeneration Site within the LAP. On the 13th November 2023 the LAP was extended for a further period of 5 years.

3.0 Planning History

3.1. RZLT Appeal

An Bord Pleanála Ref. ABP-316345-23 / Planning Authority Ref. DM22-0020 refers to an October 2023 decision which confirms the determination of the local authority to include lands at Former Blakes and Esmonde Motors Site, Stillorgan, Co. Dublin in the RZLT MAP.

Other Applications

ABP-313266-244 – Application lodged in April 2022 for a Strategic Housing Development (SHD) for a mixed-use scheme of 377 Build-to-Rent apartments, café, creche and associated works. No decision to date.

ABP-300520-17 - Permission granted in March 2018 for a mixed use development comprising of 179 no. student accommodation units (576 no. bed spaces), 103 no.

residential apartment units, retail unit, community sports hall and all associated site works.

PA Ref. ABP-300520-17/E1 – Permission refused for extension of duration of permission in August 2023 as substantial works had not been carried out during the appropriate period.

PA Ref. ABP-300520-17/E – Permission refused for extension of duration of permission in May 2023 as substantial works had not been carried out during the appropriate period.

4.0 Submission to the Local Authority

- 4.1 The appellant made a submission to the Local Authority seeking to have the lands removed from the final RZLT map on the basis that they are contaminated. Reference is made to the challenges associated with the application process, potential for judicial review, and that RZLT should only apply when a final grant of permission is secured. The land is not considered vacant or idle because the landowner is actively seeking to develop the lands.

5.0 Determination by the Local Authority

- 5.1 The Local Authority determined that the lands are in scope for the following reasons:
- The land is zoned for a mixture of uses, including residential uses and it is reasonable to consider that the land is vacant or idle.
 - 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 that the land is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

4.0 The Appeal

4.1. Grounds of Appeal

The following points are made in support of the appeal:

- Despite best endeavours to secure planning permission, this has not been achieved to date due to delays in the planning system outside the landowner's control, which highlights the unfairness with applying the RZLT in such circumstances.
- Delays caused by An Bord Pleanála and / or Judicial Review are pertinent to the subject site. It would be appropriate that the new provision for exemption of the tax under section 653AF of the Taxes Consolidation Act 1997, as amended, should apply to the subject lands with regards to the delays in the decision making process.
- Soil investigations were undertaken in July 2017 and environmental tests (dry soil and leachate) were undertaken on selected samples in accordance with ARUP specifications. While mitigation is proposed in the current SHD application, these works cannot commence until permission is granted and, therefore, at the date of the map the constraint exists and the land should be excluded. Given the potential risk of contamination it would be prudent to defer the inclusion of the site within the RZLT maps as per section 653B(c). Reference made to Section 28 Guidelines, Residential Zoned Land Tax-Guidelines for Planning Authorities (June 2022) in which land contamination is given as a reason for exclusion from the map.
- The application of the RZLT should only become applicable when a final grant of permission is secured.
- In terms of the current SHD application before the Board, the risk of future litigation against a grant of permission is possible, with consequential delays outside of the applicant's control on the delivery of housing on this site. Despite best efforts to secure permission and develop the lands, impediments imposed by third parties have consistently stymied efforts for progress. The landowner is

active in seeking to develop the subject lands and they should not reasonably be considered as lying vacant or idle and it would be appropriate to remove the subject lands from the RZLT map as per section 653B(c)(ii).

Enclosures received with the appeal are set out below:

- Site Location Map.
- Copy of original submission.
- Copy of acknowledgement of submission.
- Copy of JBA Environmental Assessment Report.
- Copy of Local Authority decision.
- Evidence of ownership.

5.0 **Assessment**

- 5.1 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.”

- 5.2 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

subject lands are zoned 'DC – District Centre' in the Dun Laoghaire Rathdown County Development Plan 2022-2028 within which residential use is permissible and are therefore within scope of section 653B(a)(ii).

- 5.3 Section 653B(c)(ii) provides for exclusion of lands zoned for a mixture of uses including residential use from the RZLT map unless it is reasonable to consider that the land is vacant or idle. Page 12 of the RZLT Guidelines set out that 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

Section 3.1.2 of the Guidelines relates to exclusions of particular lands from the map. In terms of determining whether lands are vacant or idle the Guidelines state the following:

Setting out the text in the legislation 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land; the first step is to determine if the development on the land is required for or integral to a trade or profession being carried out on the land or adjacent to the land. The second step is to determine if the development is unauthorised.

The appellant contends that the landowner is active in seeking to develop the subject lands, that delays have arisen outside their control and, as such, the lands should not reasonably be considered as lying vacant or idle. It is clear that the land is vacant or idle and has been such for a number of years. Section 653B does not include criteria exempting lands on the basis that development is delayed in the planning process or on account of potential judicial review proceedings. The exemption under 653B(c)(ii) does not apply to the subject lands.

- 5.4 Having regard to section 653B(b), these brownfield lands are located within an urban area and have frontage onto the N11 and the R825. It is apparent that the lands have access to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity for such development.

5.5 The appellant's submission and specifically the attached Environmental Assessment Report dated September 2017, associated with a previous application pertaining to the lands (ABP-300520-17 refers) indicates that the site was contaminated by spillages of diesel from underground storage tanks many years ago, which were removed, with the site allowed to remediate by natural processes. Section 653B (c) relates to land where it is reasonable to consider is not affected, by reason of its physical condition, by matters to a sufficient degree, which would preclude the provision of dwellings, including land in need of specific remediation for contamination and land which has significant known archaeological remains.

Section 3.1.2 of the RZLT Guidelines provides guidance in terms of exclusions of lands as set out in the legislation, including lands referred to in section 653B (c). Specifically, page 9 of the RZLT Guidelines states:

"Lands which are unable to be developed due to the need for significant remediation are to be excluded from the scope of the measure.....Where lands are not identified as an EPA Licensed Site, any submission to the local authority requesting exclusion from the draft or supplemental map on this basis should submit verifiable evidence in the form of a preliminary site assessment report setting out the level of contamination on the lands, sufficient to enable the local authority to assess whether the land in question should benefit from this exclusion (See section 653B(c) of the legislation)."

I note that the Local Authority sought the EPA's comments regarding the landowner's request to exclude the lands from the map on the basis of their contention of the potential risk of contamination. In response, the EPA advised that it did not appear to hold any records pertaining to the lands and as such had no knowledge as to whether the lands are affected by known contamination risks or not. The Environmental Health Section of the Local Authority, which previously inspected the site and had access to the Environmental Assessment Report note that while some contamination did exist on site, there is insufficient evidence provided that would support the exclusion of the lands from the map. Having regard to the foregoing, I do not consider that the appeal submission provides sufficient evidence that the lands are contaminated in such a significant way which would preclude residential development. Lands containing contaminated soil have been developed in the past and that the issue of contamination is generally

dealt with as part of the development works. I consider this matter should be addressed through the development management process. As such, I consider that the exemption under section 653B (c) does not apply to these lands.

- 5.6 Section 3.3.2 of the Guidelines also confirms that An Bord Pleanála is restricted to considering whether the land meets the qualifying criteria set out in section 653B only. The remaining grounds of appeal concerning, inter alia, perceived unfairness in terms of the application of RZLT, delays to development of the lands purportedly caused by third parties, including delays in making decisions on applications, are outside the scope of the appeal process. An Bord Pleanála is restricted in this process to considering whether the land meets the qualifying criteria set out in section 653B only; the aforementioned grounds of appeal falls outside the qualifying criteria included in section 653B and cannot be considered by the board.

6.0 Recommendation

- 6.1. I consider that the lands identified as Parcel ID DELA00002268 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.

7.0 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 DELA00002268 on the RZLT Final Map zoned Objective DC are considered to be within scope of Section 653B(a). The lands are located within an established urban area, 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 DC mixed-use zoning objective that applies to these lands. It has not been demonstrated that the level of contamination of the lands is to such an extent that would preclude residential development on the

lands, and as such, the exemption under section 653B (c) does not apply to the lands. The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). Matters relating to perceived unfairness in terms of the application of RZLT, delays to development of the lands and in decision making, are outside the qualifying criteria included in section 653B and cannot be considered by the board.

8.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dun Laoghaire Rathdown County Council

Local Authority Reference Number: DM24/0005

Appeal by Cairn Homes Properties Ltd.

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 Council on the 25th day of June 2024 in respect of the site described below.

Lands at: the Former Blakes and Esmonde Motors site at Stillorgan, 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 DELA00002268 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 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 DELA00002268 on the RZLT Final Map zoned Objective DC are considered to be within scope of Section 653B(a). The lands are located within an established urban area, 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 DC mixed-use zoning objective that applies to these lands. It has not been demonstrated that the level of contamination of the lands is to such an extent that would preclude residential development on the lands, and as such, the exemption under section 653B (c) does not apply to the lands. The lands are considered to be vacant or idle within the meaning of section 653B(c)(ii). Matters relating to perceived unfairness in terms of the application of RZLT, delays to development of the lands and in decision making, are outside the qualifying criteria included in section 653B and cannot be considered by the board.

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.

John Duffy
Planning Inspector

8th October 2024