Inspector's Report

ACP-324502-26

Type of Appeal	Appeal under section 653J of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.
Location	Lands at Cabinteely Village, North of Loughlinstown and west of Ballybrack.
Local Authority	Dun Laoghaire-Rathdown County Council.
Planning Authority Reg. Ref.	DM 26/005
Parcel ID	DELA00000039 & DELA00000015
Appellant(s)	Evara Limited
Inspector	Irené McCormack

1.0 Site Location and Description

1.1.1. The lands comprise a series of sites situated at various locations within the Cherrywood Planning Scheme area, in Development areas 1 and 8. The lands relate to L1 & L2 -Growth Area 2 – Development Area 1 (Parcel ID DELA00000039) and T1-Growth Area 3 -Development Areas 8 (Parcel ID DELA00000015).

1.1.2. Cherrywood is located close to Cabinteely Village, north of Loughlinstown and west of Ballybrack.

1.1.3. The general area around the site is characterised by new residential development.

2.0 Zoning and Other Provisions

The Cherrywood SDZ Planning Scheme 2014 (as amended)

2.1.1. The site is part of an area identified as the Cherrywood SDZ. The Cherrywood SDZ Planning Scheme 2014 (as amended) sets out a detailed framework for the future development of the area.

2.1.2. Chapter 1 of the Planning Scheme states that 'the adopted Planning Scheme is a standalone planning document from the County Development Plan and is not superseded by future County Development Plans'. However, where the Planning Scheme document does not address an aspect of a development proposals the policies and objectives of the County Development Plan 2022-2028 will apply.

2.1.3. The role of the Cherrywood Development Agency Project Team (DAPT) is to examine the planning applications and to assess whether it has addressed the relevant policies and objection of the adopted Cherrywood SDZ.

2.1.4. Zoning -

Parcel ID - DELA00000015 - The land is zoned Village Centre (T1) and is located within Development Area 8.

Parcel ID DELA00000039 – The land is zoned Residential and is located within Development Area 1 – L1/L2.

2.1.5. Chapter 1 relates to the Planning Scheme – inter alia Structure, Context, Background

2.1.6. Chapter 2 relates to the Proposed Development in Cherrywood

In Chapter 2 'Proposed Development in Cherrywood' the following lands are

designated to deliver residential development, as follows:

Land	Zoning	No. of Units
L1	Res 3	Min 1417 – Max 3161
L2	Res 4	Min 502 – Max 1033
T1	Village Centre	Max c. 2,160 residential units in the Town Centre and 3 no. Village Centres

This Chapter addresses:

A. The nature of development proposed describes the Primary Land Uses and supporting land uses.

B. The scale of development proposed sets out the overall quantum of different land uses, density of development across the Plan Area, plot ratio for non-residential development and units per hectare for residential areas.

C. The form of development describes urban form, building height, linkages, views and prospects.

Section 2.2 relates to Primary Land Uses.

2.1.7. Chapter 6 – Development Areas

The land is identified within Development Area 1: Lehaunstown

Table 6.1.1. Development Type and Quantum for Development Area 1 Lehaunstown:

DEVELOPMENT AREA 1 LEHAUNSTOWN LAND USE AREAS	
LAND USE	AREA IN HECTARES
Mixed Use Village Centre	0.9
Residential	17.7
Green Infrastructure	9.39

DEVELOPMENT AREA 1 LEHAUNSTOWN	
Gross Area HA	Net Developable HA
40.8	19.5

The land is identified within Development Area 8: Tully.

Table 6.8.1: Development Type and Quantum Development Area 8 Tully:

DEVELOPMENT AREA 8 TULLY LAND USE AREAS	
LAND USE	**AREA IN HECTARES**
Mixed Use Village Centre	1.2
Commercial Uses	3.6
Residential	16.1
Education	3.2
Green Infrastructure	5.5

2.1.8. Chapter 7 relates to Implementation – Sequencing and Phasing of Development

Section 7.2 Overview

The overall Plan Area is divided into 8 Development Areas (Chapter 6). The 8 Development Areas are grouped together into 3 Growth Areas as follows:

- Growth Area 1: Development Areas 2, 4,5, and 6A
- Growth Area 2: Development Areas 1 and 3. (specific objective H27)
- Growth Area 3: Development Areas 6B, 7 and 8.

Section 7.2.1 Sequencing & Implementation Growth Areas

In relation to Residential and separately in relation to Village Centre, the following is stated in Section 7.2.1:

• ***Residential:*** *Growth Area 1 can be permitted immediately. In addition, on the basis of the infrastructure permitted to-date and under construction (Roads Phase 1, Tully Park, Ticknick Park and Beckett Park), it is considered appropriate that in addition to the residential development of Growth Area 1, development up to a maximum of 2,300 residential units in total, in either Growth Area 2 or 3 may be permitted in tandem with Growth Area 1 (Refer To Map 7.2). Accordingly, the sequencing requirements allow for the delivery of residential units in Growth Areas 2 & 3 in tandem with the Growth Area 1. In addition, the Village Centres may be permitted as supporting uses for the initial threshold of 2,300 residential units in Growth Areas 2 & 3*

• ***Village Centres:*** *The villages along with the neighbourhood concept underpin the vision and key principles for a sustainable Cherrywood. With their range of local retail, services and easy access by walking or cycling to the adjoining residential areas, the*

villages lie at the heart of the community. To ensure their delivery in tandem with the new residential areas, each of the Village Centres must be permitted prior to the grant of permission for any development exceeding the minimum quantum of residential units in the associated Development Areas, i.e. Development Areas 1, 3 & 8.

Table 7.3: Transportation Infrastructure

Section 7.2.2 Infrastructure Delivery

Section 7.2.2 of the Planning Scheme states: '…… it is acknowledged that there may be exceptional or unforeseen circumstances beyond the reasonable control of an individual developer or the local authority, whereby a piece of infrastructure necessary to progress the development of a Growth Area cannot be provided in the short to medium term (circa 0-3 years). In such instances, there may be an appropriate alternative utilising other infrastructure as provided for under the Planning Scheme, as an interim measure to facilitate the early delivery of housing…..

Construction Access -The Planning Scheme also identifies construction access points/routes for the Development Areas. Where any such construction accesses as identified in Chapter 6, cannot be achieved and where alternatives are proposed, the Planning Authority will consider such proposals on their merits…..'

Table 7.5: Strategic Infrastructure and Services – *Phasing & Threshold*

The document also includes Appendices A- I

Appendix A – Primary Land Use Matrix Cherrywood Planning Scheme.

Dún Laoghaire-Rathdown County Development Plan 2022-2028

2.1.9. Chapter 2- Core Strategy

2.6.1.1 Cherrywood Strategic Development Zone

2.1.10. Chapter 13 – Land Use Zoning

Section 13.1.9 Cherrywood SDZ Planning states -

The Cherrywood SDZ Planning Scheme was approved by An Bord Pleanála in April 2014. There have been a number of amendments to the scheme.

<u>Other relevant CDP Policies/Objectives</u>

2.1.11. Chapter 2 – Core Strategy

Section 2.3.7.1 'Potential Residential Yield' where in reference to the Cherrywood SDZ area a residential yield of between 5,596 to 8,186 units is stated.

• Section 2.4.4 relates to the Dún Laoghaire-Rathdown (DLR) Core Strategy where in relation to Cherrywood, the following is stated:

'*The full capacity of the Cherrywood Strategic Development Zone is incorporated into the Core Strategy Table below and comprises an estimated residential yield of between 5,596 to 8,186 units. While the Cherrywood SDZ lands comprise Tier 1 and 2 zoned residential lands that may be developed within the lifetime of the Plan, it is acknowledged that the full build-out of Cherrywood may extend beyond the timeframe of the Plan*.'

• Table 2.9 designates the area of Cherrywood as Tier 1 and Tier 2. The Plan does not indicate which areas of the SDZ are Tier 1 or Tier 2.

• Policy Objective CS9 – Strategic Development Zone: It is a Policy Objective to continue to implement the approved Planning Scheme for the Cherrywood Strategic Development Zone.

Section 2.6.2 relates to Active Land Management

Policy Objective CS11 – Compact Growth -It is a Policy Objective to deliver 100% of all new homes, that pertain to Dublin City and Suburbs, within or contiguous to its geographic boundary. (Consistent with RPO 3.2 of the RSES).

Table 2.7 of the plan indicates the housing target up to Q1 2028 is 18,515, which is reflective of the target outlined in the RESE. This equates to a population increase of 38,125. Table 2.9 of the Plan indicates that there are approx. 553.28 ha. of serviced land available.

2.1.12. Chapter 4 - Neighbourhood - People, Homes and Place

2.1.13. Chapter 5 – Transport and Mobility

2.1.14. Chapter 12 – Development Management

3.0 Planning History

There is an extensive planning history associated with the subject land parcels (Land Parcels DELA00000039 and DELA00000015), as follows:

L1 & L2 (Growth Area 2)

- DZ15A/0758 (as extended): Permission for Roads and Infrastructure (Phase 1) as approved under the Cherrywood SDZ Planning Scheme (2014) for form part of public road network providing access and services for the future development of the adjoining SDZ lands. Permission was GRANTED in August 2016. The duration of this permission was EXTENDED under planning reg. ref. no. DZ15A/0758/E up to November 2024.
- DZ21A/0334: Permission for development that included 482 no. dwellings in a mixture of houses, duplexes, triplexes and apartments. Permission was GRANTED in April 2022.
- DZ23A/0005: Permission for the inclusion of 89 no. residential units. Permission was GRANTED in July 2023.
- DZ23A/0468: Permission for Amendments to planning reg. ref. no. DZ21A/0334 for an overall increase in residential units permitted under planning reg. ref. no. DZ21A/0344 from 488 no. to 492 no. (4 no. additional units). Permission was GRANTED in May 2024.
- DZ25A/0044: Permission for amendments to development permitted under planning reg. ref. no. DZ21A/0334 and DZ23A/0468 to increase the overall scheme from 492 mo. units to 517 no. units. Permission was GRANTED in July 2025. Condition no. 3 b) reads as follows: 3 b) Grand Parade B - C as permitted under DZ15A/0758 shall be fully completed to a taking in charge standard and opened for use prior to the commencement of development to facilitate a construction access route to the site.

T1 (Growth Area 3)

- DZ23A/0106: Permission for a mixed use development including 139 no. dwelling units, supermarket, retail units, community facility and employment units. Permission was GRANTED in September 2023. Condition 2 of planning Reg. Ref. no. DZ23A/0106 reads as follows:

  2. a) Regarding Roads Phase 1, Residential units shall not be occupied prior to the completion of Roads Phase 1: Junction at A, roads I1-A-A1-B-L P2-C-D-D1-K1-K-F1-J-A2-A1 and road B-A2 (provided by permission DZ15A/0758 and as amended by DZ17A/0862) to Taking in Charge Standard.

b) The road network elements as permitted under DZ15A/0758 that have not been Taken-In-Charge and which serve the proposed development for construction and occupation access, shall not be a public road and shall remain as a private road until such time as Taken in Charge by the Planning Authority in accordance with DZ15A/0758 and DZ17A/0862.

REASON: To ensure consistency with the Phasing and Sequencing requirements of Cherrywood Planning Scheme Table 7.3 Transportation Infrastructure, to ensure that the road materials and specifications meet with the requirements of the Planning Authority and in the interests of the proper planning and sustainable development of the area.

Condition no. 3 planning Reg. Ref. no. DZ23A/0106 reads as follows:

3. *The proposed temporary pond shall remain in use until the date of the commissioning and commencement of operation of the permanent Regional Attenuation Pond (Pond 2A). The temporary pond shall then cease use within 6 months of the date of the commissioning and commencement of operation pf the permanent Regional Attenuation Pond (Pond 2A). It is envisaged that the period of time for the use of the temporary pond will be in the region of 2 years.*

REASON: in the interest of clarity and the proper planning and sustainable development of the area.

• DZ25A/0014: Permission for amendments to development permitted under DZ23A/0106 consisting of the reconfiguration of the basement layout, layout alterations at ground floor level, bike facilities and parking, reduction in number of car parking spaces, amendments to attenuation tank. Permission was GRANTED in March 2025**.**

Other relevant

- DZ25A/0161/WEB: Permission for the completion of a c.145 metre section of Grand Parade Road from the junction of Grand Parade and Tully Vale Road towards Bishop Street. The road was previously permitted as part of the infrastructure works granted under planning ref. DZ15A/0758. Permission was GRANTED in April 2025.
- PC/CSDZ/005/2021 – Part 8 - Proposed Regional Surface Water Attenuation

Pond 2A, Cherrywood SDZ, as part of Project Ireland 2040 and supported by the Urban Regeneration & Development Fund (URDF) (5th July 2021).

RZLT Cases with relevance to the subject Appeal sites (Land Parcels DELA00000039 and DELA00000015)

- ABP-316999-23 (Local Authority Ref. no. DM22-0087): The Board decided to Confirm the determination of the Local Authority that the following plots L1W, L1E, L2, TC5, TC6, P7, T1, T2, T3, T5 and T13, within the subject lands were in scope and should remain on the RZLT map: L1W, L1E, L2, TC5, TC6, P7, T1, T2, T3, T5 and T13. 2 no. plots (M1 and M4) within the subject lands were excluded from the RZLT map. A decision was issued on 24th October 2023.
- ABP-320378-24 (Local Authority Ref. no. DM24-17): The Board decided to Confirm the determination of the Local Authority that the lands identified as a Range of lands within the Cherrywood Planning Scheme Area, Dublin 18: Plot 1 - Growth Area 2 - L3; Plot 2 - Growth Area 3 - T4; Plot 3 - Growth Area 1 - DM5; Plot 4 - Growth Area 1 - DM6; Plot 5 - Growth Area 1 - TC5; Plot 6 - Growth Area 1 - DM4; Plot 7 – Growth Area 1 – DM3 (Parcel ID DELA00000036, DELA00000031, DELA00000033, DELA00000026, DELA00000032, DELA00000034, DELA00000028). The appeal against the LA determination relates only to Plot 3 (Parcel ID DELA00000033), Plot 5 (Parcel ID DELA00000026), and Plot 6 (Parcel ID DELA00000032). A decision was issued on 16th October 2024.
- ABP-320384-24 (Local Authority Ref. no. DM24-0015): The Board Decided to Confirm the determination of the Local Authority that the following plots L1 and L2, TC5, TC6, T1, T3, T5 and T13 within the subject lands were in scope and should remain on the RZLT map and that Plot P7 within the subject lands was excluded from the RZLT map. A decision was issued on 22nd October 2024.
- ACP 323337-25 ((Local Authority Ref. no. DM25/010): The Commission decided to Confirm the determination of the Local Authority that the following plots L1 & L2 -Growth Area 2 – Development Area 1 (Parcel ID DELA00000039) and T1-Growth Area 3 -Development Areas 8 (Parcel ID DELA00000015). A decision was issued on 14th November 2025.

4.0 Submissions by Prescribed Bodies – PA Stage

Uisce Eireann – serviceable for both water and wastewater.

Development Agency Project Team (DAPT) The following is noted:

L1/L2 DA Lehaunstown -GA2- In Scope -No change.

- 2,800 threshold does not apply. Permitted and not commenced.
- As the site has permission, it is no longer subject to further phasing requirements.
- The site can be accessed via Roads Phase 1 which is substantially complete and that Grande Parade A2-B is not required for access. Consent has been given (at planning application stage) by 3rd party landowner which clearly states for the purposes of construction and operational access and for the purposes of facilitating future connections to public infrastructure (surface water drainage).
- Castle Street bus gate is subject to the opening of Gun and Drum Hill. Partially within the control of the landowner and consent was given by the other landowner to access along Gun and Drum Hill on lands outside of Evara's control.
- Site is serviceable by way of interim surface water management solution provided in Site P7 (DZ23A/005), in lieu of Pond 2A, as allowed for under section 7.2.2 of the scheme. P7 is within the applicant's ownership.
- Site is serviceable.

T1 DA 8 Tully -GA3- In Scope – No change.

- Permitted VC -Village centre zoned including residential and not subject to 2,800 threshold.
- Consent given by 3rd party landowner for construction and operational access for the purpose of facilitating future connections to public infrastructure (surface water drainage).
- Village centre – not subject to any phasing requirements.
- Site is serviceable by way of interim surface water management solution provided in Site P7 in lieu of Pond 2A on lands within the applicant's ownership.
- Site is serviceable.

5.0 Determination by the Local Authority

Date of Determination: 23rd June 2026

The local authority determined that:

'*A determination pursuant to Section 653E(1)(a)(ii)(I) of the Taxes Consolidation Act 1997 (as amended), for submission reference DM26/004, to INCLDE the above lands* (L1 & L2 -Growth Area 2 – Development Area 1 (Parcel ID DELA00000039) and T1-Growth Area 3 -Development Areas 8 (Parcel ID DELA00000015)) *on the Final Map of the Residential Zoned Land Tax as defined by 6536K of the Taxes Consolidation Act 1997 (as amended) for the (3) reasons set out above is hereby made.*'

Reasons:

1. *The land is zoned solely or primarily for residential use, to a mixture of uses, including residential. Where zoned for a mixture of uses, it is reasonable to consider that the lands are vacant or idle.*
2. *It is reasonable to consider the land may have access, or be connected, to public infrastructure and facilities necessary for dwellings to be development and with sufficient service capacity available for such development.*
3. *It is reasonable to consider the lands 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:

- It is argued that the subject lands do not meet and have not met at any time from 1 January 2022 up to an including 1 January 2026, the criteria in Part 22A of the Taxes Consolidation Act 2007, as amended. They do not fall in scope of the relevant criteria set out in section 653B.
- It is set out that they do not have legal right to complete the works on, connect to or utilise roads, footpaths and surface water outside their ownership/control.
- It is argued that there are infrastructural constraints including:
    - Roads Phase 1 (Reg. Ref. DZ15A/0758 as extended) – It is argued that planning permission on both land parcels the subject of this appeal required completion of Roads Phase 1 and access via Grande Parade (which forms part

of Roads Phase 1 project). It is set out that the appellant does not have any legal right to either complete works on or to utilise that portion of Grande Parade outside their ownership until such times as the lands have been taken in charge by DLRCC. Referring to DZ25A/0161/WEB for the completion of a c.145 metre section of Grand Parade road from the junction of Grand Parade and Tully Vale Road towards Bishop Street. It is set out that the delivery of these works are not within the appellant's control. Reference to phasing requirements as set to in section 7.2.1 of the scheme.

- Letters of consent from the road/landowners were included in the planning applications however these have been misinterpreted as enabling the required access. It is argued that letters of concerns for planning purposes only extend to consent to include those lands within the red line of the planning application. They do not convey any legal right to utilise the lands. The lands do not meet scoping requirements as being connected to or have capacity for road infrastructure.
- Pond 2A – the sites are dependent on the completion of Pond 2A for their permanent surface water solution. The delivery of the pond is in the control of DLRCC and while permission has been granted works are not yet complete.
- The permission on the L1/L2 (DZ21A/0334) site includes a condition which prevent required works on the L1/L2 site pending completion of Pond 2A. It is set out that site T1 has agreed interim/temporary privately managed solution at significant costs pending delivery of Pond 2A. This interim solution is on the appellants private lands, therefore temporarily sterilising residential zoned lands for development and is privately funded by the appellant.

- The appeal requests the Commission to have regard to pg. 24 of the guidelines as regards connection to services that require access to 3rd party lands or 3rd party development to take place in which case the land may be out of scope.
- Work is not due to commence on Pond 2A until Q1 2027, a year after the appropriate date.
- Reference is made to the interpretation of the legalisation and case law including reference that the RZLT Guidelines pre-date the introduction of paragraph (iia) into section 653b TCA, by the Finance (No. 2) Act 2023 of circular letter NRUP 01/2024

as regards 'exclusion of lands which is subject to phasing objectives in a development plan..'

- The County Core Strategy instructs that the lands within Cherrywood Planning Scheme are subject to phased management under the Scheme and that the full build out of the scheme may extend beyond the timeframe of the plan. The delivery of the required phasing infrastructure is outside of the control/ ownership of the appellant.

7.0 Submissions by Prescribed Bodies – Appeal Stage

Uisce Eireann (17th August 2026) – This report reiterates comments made to DLRCC that the lands are serviceable for both water and wastewater and notes that a watermain upgrade will be required at 230m.

8.0 Assessment

8.1. **Date of Assessment:** The date the land was first added to the RZLT map was the 1 January 2022. I confirm that the date of my assessment as to whether the lands are in scope is as of 1January 2026.

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Commission'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[1] 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".

8.2. **Zoning:**

[1] Now An Coimisiún Pleanála

8.2.1. The subject lands are included in The Cherrywood SDZ Planning Scheme 2014 (as amended), the adopted Planning Scheme is a standalone planning document from the County Development Plan and is not superseded by future County Development Plans. The SDZ planning process is set out in Sections 165 to 171 of the Planning and Development Act 2000 (as amended) which provides that a Planning Scheme is prepared by a Development Agency specified by the Government. Dún Laoghaire-Rathdown County Council was specified as the Development Agency for the purposes of preparing the Planning Scheme for Cherrywood.

8.2.2. A Planning Scheme must indicate the types of development that may be permitted within an SDZ. The Government Order designating Cherrywood as a site for an SDZ, S.I NO. 535 of 2010, states that Cherrywood SDZ may accommodate: "residential development and the provision of schools and other educational facilities, commercial activities, including office, hotel, leisure and retail facilities, rail infrastructure, emergency services and the provision of community facilities as referred to in Part III of the First Schedule to the Act, including health and childcare services".

8.2.3. The legislation clearly sets out that land in scope will be zoned for residential development or a mixture or 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.

8.2.4. The lands which are the subject of this RZLT Appeal comprises 2 no. Land Parcels, i.e. DELA00000039 and DELA00000015:

- Land Parcel DELA00000039 is zoned Residential in the Cherrywood SDZ Planning Scheme and is therefore within scope as per Section 653B(a)(i).
- Land Parcel DELA00000015 is zoned Village Centre in the Cherrywood SDZ Planning Scheme where a mixture of uses, including residential use, are permitted in principle.

8.3. **Status of Lands:** 653B(2)(a)(i) (primarily residential use) /653B(c)(ii) (mixture of uses)

The subject lands/site comprise:

- Parcel ID - DELA00000015 - The land is zoned Village Centre (T1) and is

located within Development Area 8.

- Parcel ID DELA00000039 – The land is zoned Residential and is located within Development Area 1 – L1/L2.

653B(2)(a)(i)

a) is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use,

Parcel ID DELA00000039 – The land is zoned Residential and is located within Development Area 1 – L1/L2 in the Cherrywood Planning Scheme. Residential use is permitted in principle under this zoning designation. The lands are considered within scope of section 653B(a)(i).

653B(c)(ii) (mixture of uses)

Parcel ID - DELA00000015 - The land is zoned Village Centre (T1) and is located within Development Area 8.

8.3.1. With regard to residential zoned land, and mixed-use zoned land, sections 653B(c)(i) and (c)(ii) respectively identify where certain uses may be excluded from the tax measure. The guidelines state:

8.3.2. *'Operating Uses on Mixed Use Zoned Lands - With reference to land that is included in a development plan or local area plan and is zoned for a mixture of uses, including residential such as TC-Town Centre, DC-District Centre, RE-Regeneration, LC-Local Centre and RV-Rural Village, all land should be excluded from the map unless is it considered 'vacant or idle'. 'For clarity, lands on mixed use zonings only fall into scope where residential development is a 'permitted in principle' use in that zoning*.'(Guidelines Pg 11).

8.3.3. Appendix A: *Primary Land Use Matrix Cherrywood Planning Scheme* of the planning scheme establishes that residential *is 'permitted in principle'* within the Village Centre zoning. The Guidelines clearly establish that the aim of the taxation measure is to activate vacant or underused land for provision of housing and on land which is located within mixed use zones and which permits a variety of uses including residential should only be considered to be in scope for the tax where they are vacant or idle. In

this instance there is no dispute over the land use zoning assigned to the lands nor does the first party argue that the land is not 'vacant or idle' within the meaning of the Guidelines. Therefore, it is reasonable to consider that the entirety of the land zoned Village Centre incorporating mixed use land uses including residential is vacant or idle and considered to be in scope for the tax.

8.4. **Public Infrastructure and Facilities:**

8.4.1. The primary focus of the appeal relates to infrastructure issues which preclude development and result in the lands being 'Out of Scope'. The appellant contends that they do not have legal right to complete the works on, connect to or utilise roads, footpaths and surface water outside their ownership/control.

8.4.2. Section 4.1.1(iii) of the RZLT guidelines state:

"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. Where the infrastructure does not meet the threshold above, the following needs to be considered:

• *Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope?*

• *Do the connections to services involve minor works, in which case the land may be in scope?*

• *Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope?"*

8.4.3. As regards access, the northernmost Land Parcel DELA000000039 has an L shape and that its northwestern boundary is adjacent to a partially complete distributor road, Barrington's Road/ Aoibhín's Way. Loughanstown Luas stop and the Luas (Green) line are located along the northeast boundary of this land parcel and runs parallel to the route of Grand Parade distributor road. Grand Parade Road links to Valley Drive Road

further to the southeast which in turn connects to the R118 Regional Road further to the southeast.

8.4.4. There is an existing housing development, part of which is under construction, located to the southwest of the subject Land Parcel DELA00000039, which includes a number of potentially viable access points to Land Parcel DELA00000039. Google satellite imagery reviewed 27th October 2026 would indicate that a construction entrance to this Land Parcel is established along its northern site boundary (Aoibhín's Way) and that the northern part of the Land Parcel includes construction materials. It would appear further access points are available via Castle Street and Castle Avenue to the southwest and south respectively. As regards Land Parcel DELA00000015, this is located abutting Castle Street and Gun and Drum Hill.

8.4.5. The appellant contends that planning permission on both land parcels the subject of this appeal require completion of Roads Phase 1 and access via Grande Parade (which forms part of Roads Phase 1 project, Reg. Ref. DZ15A/0758 as extended)). It is set out that the appellant does not have any legal right to either complete works on or to utilise that portion of Grande Parade outside their ownership until such times as the lands have been taken in charge by DLRCC. Referring to DZ25A/0161/WEB for the completion of a c.145 metre section of Grand Parade road from the junction of Grand Parade and Tully Vale Road towards Bishop Street, it is set out that the delivery of these works is not within the appellant's control.

8.4.6. With respect to access, I draw the Commission's attention to the report from the Development Agency Project Team (DAPT) (which formed part of the PA assessment) and states that the site can be accessed via Roads Phase 1 which is substantially complete. As regards the first party contention that part of the road is not accessible (blocked off from public access and in third party ownership). Whilst this may currently be the case, I note that this through access is not required to access the lands nor does it impede the development of these lands by virtue of the fact that direct access from the site along this section of the road would be restricted in any case by the Luas (Green) line located along the northeast boundary. Similarly, pedestrian, cycle routes and public lighting are all provided for in the already completed adjacent road network.

8.4.7. The appellant has raised concerns that the letters of consent for planning permission planning (DZ25A/0044) do not extend to lands outside the permitted red line boundary

nor they do not convey any legal right to utilise the lands, I note the letter (William Neville & Sons dated 25/09/2024 appended to this appeal) clearly states consent to 'using the subject lands for access to the roads, cycleways and footpaths to access their lands (for both construction and operational traffic, pedestrian an cyclists etc) pending their taking in charge..' Furthermore, the site layout map associated with DZ25A/0044 includes the adjoining road network and associated footpath lighting etc within the red line boundary. (Appendix 1- Permitted Site location Map - SDZ25A/0044/WEB as per DLRCC planning enquiry website accessed 27/10/2026).

8.4.8. However, neither the PA nor the DAPT have confirmed if the road network accessing the site has been taken in charge and it is unclear from the documentation on file ownership of the road network accessing the site and any necessary 3rd party consent that maybe required to utilise the road network. There is uncertainty in this regard. On the basis of the documentation on file, I am not satisfied that the landbanks are 'connected' or 'able to connect' to the road network.

8.4.9. The appellant further contends the sites are dependent on the completion of Pond 2A for their permanent surface water solution. The delivery of the pond is in the control of DLRCC and while permission has been granted works are not yet complete. The site is served by an interim surface water management solution, in lieu of Pond 2A, on lands within the appellants ownership. In this regard, I note there is an existing pond located along the northeast site boundary of Land Parcel DELA00000039, adjacent to the Luas Line. The other site (Land Parcel DELA00000039 (T1)) also utilises the same interim surface water management arrangement pending the completion of Pond 2A.

8.4.10. The appellant submits that the permission on the L1/L2 site (DZ21A/0334) includes a condition which prevents required works on the L1/L2 site pending completion of Pond 2A. As per Section 653B (b) the test is whether it is reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including, in this instance, surface water drainage. Planning permission (Part 8 - PC/CSDZ/005/2021) for the pond was secured in 2021. However Detailed Design completion & Tender for works to issue are ongoing. Therefore, having regard to the foregoing, in my opinion, it is reasonable to consider the subject Land Parcels (DELA00000039 and DELA00000015) did not have access, or be connected, to public infrastructure and facilities, as per the provisions of Section 653B (b).

8.4.11. Regarding phasing, with respect to infrastructure delivery and development phasing established as part of Cherrywood Scheme (chapter 7), as detailed above, it is reasonable to consider the lands have access or can be accessed via the local road network. Land Parcel DELA00000015 is zoned Village Centre and is therefore not subject to phasing, as per the Cherrywood SDZ Scheme. Land Parcels DELA00000039 and DELA00000015 are within Growth Area 2 (L1 & L2) and Growth Area 3 (T1). The permitted residential units are within the additional threshold that is permissible together with the development of Growth Area 1 in accordance with the Sequencing and Implementation objective of the Cherrywood Planning Scheme.

8.4.12. The guidelines state *"in certain instances, phasing of particular settlements via an SDZ, LAP or non-statutory land use plan may require significant road or public transport infrastructure to be in place prior to development. Where such plans allow for a certain quantum of residential development prior to such projects being permitted or constructed, all of the land which may be able to access the infrastructure, or if specifically identified in the plan, the relevant phased area of land, should be considered in scope.'*.

8.4.13. In addition, Circular letter NRUP 01/2024 provided an Amendment to Section 653B - *Phased Land.* Section 653B of the TCA was amended by insertion of paragraph (iia) which identifies an exclusion for land which is subject to phasing objectives in a development plan or a local area plan, and the development of which would not conform with those objectives.

8.4.14. The Commission will note that Section 2.4.4 of Chapter 2 *Core Strategy* of the DLRCC Development Plan 2022-2028 where in reference to the Cherrywood SDZ states that 'the full capacity of the Cherrywood Strategic Development Zone is incorporated into the Core Strategy.' I note that although the Cherrywood SDZ lands comprise Tier 1 and Tier 2 zoned residential lands that may be delivered within the lifetime of the Dún Laoghaire Rathdown County Development Plan 2022-2028, it acknowledges that the full build out of Cherrywood may extend beyond the lifetime of the plan. Furthermore section 7.2 *Sequence of Development* of the Planning Scheme states that '*The Planning Scheme has successfully promoted and facilitated the significant front-loading of key infrastructure elements'*.

8.4.15. Having regard to the foregoing, it is my opinion that it is reasonable to conclude that

the Sequencing and Implementation objectives of the Cherrywood Planning Scheme do not preclude the provision of residential development on the subject Land Parcels (DELA00000039 and DELA00000015) and therefore the lands remain in scope and are not exempt on the basis of phasing as per the provisions of Section 653B (iia).

8.4.16. Section 3.1.1 *Criteria for Inclusion within the Scope of the Tax Measure* of the guidelines states 'the land must be connected to, or have access to public infrastructure and facilities necessary for dwelling to be developed and with sufficient service capacity available for such development. All lands which fulfil the criteria set out within the provisions of the legislation, whether privately or publicly owned are considered to be in scope.'

8.4.17. I draw the Commission's attention to the report from Uisce Eireann date XXX which notes that the lands are serviceable for water and wastewater. However, the report identified that need for a 230m watermain upgrade. Therefore, the land was not serviceable at the time of assessment on 1st January 2026. In addition, a review of Uisce Eireann capacity register on 27th October 2026 indicted *'= Potential Capacity Available to meet 2035 population targets - Level of service (LoS) improvement required. Capacity constraints exist and additional analysis of Pre-connection Enquiries and Connection Applications will be undertaken as required by UÉ on an individual basis considering their specific load requirements. Improvement proposals will include but are not limited to leakage reduction and/or capital investment. These proposals will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process*.' Therefore, notwithstanding the report from UE there is uncertainly around the capacity of the water network to accommodate the development of the lands. Having regard to the foregoing, I am not satisfied it is reasonable to consider that the lands 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.

8.4.18. As regards wastewater, a review of the Uisce Eireann capacity register on 27/10/2026 indicate 'spare capacity' is available in the wastewater network. No concerns were raised in this regard.

8.4.19. The guidelines set out that in assessing whether land or landbanks are able to connect

to services, account should be taken of 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.

8.4.20. In this context, I am satisfied that as of the date of assessment – the 1st of January 2026, there were infrastructural; deficits and constraints that were beyond the scope of the developer to deliver, particularly in relation to the capacity of the water network.

- Roads – No – Neither the PA nor the DAPT have confirmed if the road network accessing the site has been taken in charge and it is unclear from the documentation on file ownership of the road network accessing the site and any necessary 3rd party consent that maybe required to utilise the road network. There is uncertainty in this regard. On the basis of the documentation on file, I am not satisfied that the landbanks are 'connected' or 'able to connect' to the road network.
- Footpaths – YES - As detailed above the land is accessible to the immediately adjacent road network and associated footpaths etc.
- Public Lighting – YES - As detailed above the site is accessible to the immediately adjacent road network and associated public lighting etc.
- Foul Sewer Drainage – YES – Par. 8.4.16 above.
- Water Supply – No – constrained – Uisce Eireann have identified the need for a 230m watermain upgrade to service the site and the Uisce Eireann Capacity Register sets out that a '*Level of service (LoS) improvement required. Capacity constraints exist and additional analysis of Pre-connection Enquiries and Connection applications*' will be required. Therefore, there is uncertainty around water supply capacity.

8.5. **Physical Condition:**

8.5.1. 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, including contamination or the presence of known archaeological or historic remains. No matters were raised in this regard.

8.6. **Exclusions - 653B(c) (iii) to (v):**

8.6.1. Section 3.1.2 *Exclusions from the Map* of the guidelines state that exclusions of

particular lands as set out in the legislation and as clarified in the guidelines should be taken into account.

8.6.2. Firstly, with regards to 653B(c) (iii) to (v), I note the lands are not specifically identified for the provision of, or is integral to, occupation by:

- social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare - NO
- transport facilities and infrastructure - NO
- energy infrastructure and facilities - NO
- telecommunications infrastructure and facilities - NO
- water and wastewater infrastructure and facilities -NO
- waste management and disposal infrastructure – NO
- recreational infrastructure, including sports facilities and playgrounds -NO

or

(iv) that is subject to a statutory designation that may preclude development - NO

or

(v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990 - NO

The guidelines state that where a zoning facilitates residential development but also makes provision for other uses including the uses identified in (iii) – (v) 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. Therefore, by virtue of the fact that the development plan does not identify these lands for the provision of uses identified in (iii) above, nor is the site subject to any statutory designations (iv) or the subject of a Derelict Site Notice (v), it is reasonable to consider that the entirety of the land is in scope.

Conclusion:

The subject lands are zoned to facilitate ‘residential’ and ‘village centre’ development. However, neither the PA nor the DAPT have confirmed if the road network accessing the site has been taken in charge and it is unclear from the documentation on file

ownership of the road network accessing the site and any necessary 3rd party consent that maybe required to utilise the road network. There is uncertainty in this regard. On the basis of the documentation on file, I am not satisfied that the landbanks are 'connected' or 'able to connect' to the road network.

The Land Parcel DELA00000039 (L1/L2) is constrained by an interim surface water management solution located within the appeal lands - Land Parcel DELA00000039, in lieu of permanent Surface Water Attenuation Pond 2A. The other site (Land Parcel DELA00000039 (T1)) also utilises the same interim surface water management arrangement pending the completion of Pond 2A. As per Section 653B(b) the test is whether it is reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including, in this instance, surface water drainage. Planning permission (Part 8 -PC/CSDZ/005/2021) for the pond was secured in 2021. However Detailed Design completion & Tender for works to issue are ongoing. Therefore, on the assessment date of the 1st January 2026, it is reasonable to consider the subject Land Parcels (DELA00000039 and DELA00000015) did not have access, or be connected, to public infrastructure and facilities, as per the provisions of Section 653B (b).

In addition, having regard to the report from Uisce Eireann dated 17th August 2026 which identified the need for a 230m watermain upgrade to service the lands and a review of the Eireann Capacity Register on 27th October 2026 which sets out that a 'Level of service (LoS) improvement' is required as 'Capacity constraints exist and additional analysis of Pre-connection Enquiries and Connection applications' will be required to accommodate water connection capacity, there is uncertainty around the capacity of the water networks to accommodate development. As such, I am satisfied that lands are not within scope having regard to the provisions of 653B(b).

9.0 Recommendation

Having regard to the foregoing I consider that the lands identified as Parcel ID DELA00000039) and Parcel ID DELA00000015 do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended for the following reasons.

10.0 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 L1 & L2 -Growth Area 2 – Development Area 1 (Parcel ID DELA00000039) and T1-Growth Area 3 -Development Areas 8 (Parcel ID DELA00000015) within Cherrywood SDZ on lands zoned Village Centre (T1) and Residential are considered in scope of section 653B(a)(i) and (ii).

However, neither the PA nor the DAPT have confirmed if the road network accessing the site has been taken in charge and it is unclear from the documentation on file ownership of the road network accessing the site and any necessary 3rd party consent that maybe required to utilise the road network. There is uncertainty in this regard. On the basis of the documentation on file, I am not satisfied that the landbanks are 'connected' or 'able to connect' to the road network.

The Land Parcel DELA00000039 (L1/L2) is constrained by an interim surface water management solution located within the appeal lands - Land Parcel DELA00000039, in lieu of permanent Surface Water Attenuation Pond 2A. The other site (Land Parcel DELA00000039 (T1)) also utilises the same interim surface water management arrangement pending the completion of Pond 2A. As per Section 653B (b) the test is whether it is reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including, in this instance, surface water drainage. Planning permission (Part 8 -PC/CSDZ/005/2021) for the pond was secured in 2021. However Detailed Design completion & Tender for works to issue are ongoing. Therefore, on the assessment date of the 1st January 2026, it is reasonable to consider the subject Land Parcels (DELA00000039 and DELA00000015) did not have access, or be connected, to public infrastructure and facilities, as per the provisions of Section 653B b).

In addition, having regard to the report from Uisce Eireann dated 17th August 2026 which identified the need for a 230m watermain upgrade to service the lands and a review of the Uisce Eireann Capacity Register on 27th October 2026 which sets out that a 'Level of service (LoS) improvement' is required as 'Capacity constraints exist and additional analysis of Pre-connection Enquiries and Connection applications' will

be required to accommodate water connection capacity, there is uncertainty around the capacity of the water networks to accommodate development.

In this context, having regard to the provisions of 653B(b), it is reasonable to consider that the lands may not 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.

11.0 Recommended Draft Commission Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dún Loaghaire Rathdown County Council

Local Authority Reference Number: DM 26/005

Land Parcel ID: Parcel ID DELA00000039 and Parcel ID DELA00000015

Appeal by Evara 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 Dún Loaghaire Rathdown County Council on the 23rd of June 2026 in respect of the site described below.

Lands at: L1 & L2 -Growth Area 2 – Development Area 1 and T1-Growth Area 3 - Development Areas 8 within Cherrywood SDZ located close to Cabinteely Village, north of Loughlinstown and west of Ballybrack.

Decision

The Commission 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 Commission set aside the determination of the local authority and allow the appeal in relation to the lands identified as Parcel ID DELA00000039 and Parcel ID DELA00000015.

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 L1 & L2 -Growth Area 2 – Development Area 1 (Parcel ID DELA00000039) and T1-Growth Area 3 -Development Areas 8 (Parcel ID DELA00000015) within Cherrywood SDZ on lands zoned Village Centre (T1) and Residential are considered in scope of section 653B(a)(i) and (ii).

However, neither the PA nor the DAPT have confirmed if the road network accessing the site has been taken in charge and it is unclear from the documentation on file ownership of the road network accessing the site and any necessary 3rd party consent that maybe required to utilise the road network. There is uncertainty in this regard. On the basis of the documentation on file, I am not satisfied that the landbanks are 'connected' or 'able to connect' to the road network.

The Land Parcel DELA00000039 (L1/L2) is constrained by an interim surface water management solution located within the appeal lands - Land Parcel DELA00000039, in lieu of permanent Surface Water Attenuation Pond 2A. The other site (Land Parcel DELA00000039 (T1)) also utilises the same interim surface water management arrangement pending the completion of Pond 2A. As per Section 653B (b) the test is whether it is reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including, in this instance, surface water drainage. Planning permission (Part 8 -PC/CSDZ/005/2021) for the pond was secured in 2021. However Detailed Design completion & Tender for works to issue are ongoing. Therefore, on the assessment date of the 1st January 2026, it is reasonable to consider the subject Land Parcels (DELA00000039 and DELA00000015) did not have access, or be connected, to public infrastructure and facilities, as per the provisions of Section 653B b).

In addition, having regard to the report from Uisce Eireann dated 17th August 2026 which identified the need for a 230m watermain upgrade to service the lands and a review of the Uisce Eireann Capacity Register on 27th October 2026 which sets out that a 'Level of service (LoS) improvement' is required as 'Capacity constraints exist and additional analysis of Pre-connection Enquiries and Connection applications' will be required to accommodate water connection capacity, there is uncertainty around the capacity of the water networks to accommodate development.

In this context, having regard to the provisions of 653B(b), it is reasonable to consider

that the lands may not 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.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way

Irené McCormack
Senior Planning Inspector

November 2026

Appendix 1 - Permitted Site location Map - SDZ25A/0044/WEB

