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Bord  
Pleanála

## Inspector's Report ABP-316326-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Mabestown, Malahide, Co. Dublin.
<b>Local Authority</b>	Fingal County Council.
<b>Local Authority Reg. Ref.</b>	RZLT 020/22
<b>Appellant</b>	Beakonshaw Developments
<b>Inspector</b>	Irené McCormack

## 1.0 Site Description

1.1. The site comprises c. 1.5ha. of lands at Mabestown, Malahide, Co. Dublin.

## 2.0 Zoning

2.1. The site is zoned RS – Residential in the Fingal Development Plan 2017-2023. This zoning Objective – *Provide for residential development and protect and improve residential amenity.*

2.2. Zoning Objective Vision- *Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.*

Note: Fingal Development Plan 2023-2029 was adopted by the Elected Members of Clare County Council at a Special Planning Meeting on the 22<sup>nd</sup> of February 2023. The Plan came into effect 6 weeks from the date of adoption, on 5<sup>th</sup> April 2023

## 3.0 Planning History

### 3.1. Site

**FCC Reg. Ref. F18A/0724** – Permission granted on 11<sup>th</sup> February 2018 for alterations to previously approved planning permission Reg. Ref. F17A/0573 comprising alterations to site 3 (Type A2) and site 4 (Type D3) formerly sites 12 and 13.

**FCC Reg. Ref. F17A/0573** – Permission granted on 24<sup>th</sup> January 2018 for the construction of 13 number detached two storey plus attic accommodation dwelling houses.

The PA at RFI queried the overhead lines traversing the site. The following response was received:

*“It was decided not to underground the cables as 2 pylons would be required on the line, and this would not be feasible or desirable. Correspondence from the ESB dated July 2017 and included in this submitted confirmed this line to be a 38KV and outlines a clearance of 7.4metres. Our proposals are a minimum 10 meters clear and as such in line with ESB requirement.”*

Permission was granted in line with the above.

## 4.0 Submission to the Local Authority

- The land comprises energy infrastructure and require a sterilisation area around them and associated pylons.

## 5.0 Determination by the Local Authority

5.1. The local authority determined the site to be in scope and should remain on the map. The local authority consideration stated that land is zoned and serviced.

5.2. The 38KV over headline traverses the northern part of the lands and while a clearance area is required it is not such that it would preclude development.

Planning history noted.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appeal reiterates the contents of the submission to the PA as set out above.
- The applicant has recently submitted a pre-planning request to FCC with a 15m clearance under the power line agreed following a meeting with the ESB on site. The appeal requests this 15m strip be removed from the RZLT having regard to section 653B(c) (iii) (I) – (VII).
- Conclusion – lands or part of the land be removed from the RZLT.

## 7.0 Assessment

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

7.2. 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. With specific reference to *Land Required for Infrastructure and Community Services* the guideline state:

“As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities....

Accordingly, a significant number of uses which may be required or are provided on either residential or mixed-use lands which permit housing are to be excluded from maps to accompany the Residential Zoned Land Tax.

These are clearly set out in Section 653B(c)(iii)(I) – (VII) and include; III. energy infrastructure and facilities, IV. telecommunications infrastructure and facilities...”

7.3. Firstly, I note the lands are not specifically identified for the provision of infrastructure or telecommunications in the Fingal Development Plan 2017-2023. The guidelines state that 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. Therefore, by virtue of the fact that the development plan does not identify these lands for the provision of infrastructure or telecommunications in accordance with the above, it is reasonable to consider that the entirety of the land is in scope.

7.4. Furthermore, as evident by the planning history on the site the 38KV line traversing the site does not preclude development. This is reinforced in by the appellants submission whereby the proposed layout presented to FCC at preplanning has been included indicating residential development on the entire site including access road, open space and parking provision located under the overhead line whilst maintaining the 15metres buffer to proposed dwelling houses.

7.5. The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines

## 8.0 Recommendation

8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## 9.0 Reasons and Considerations

9.1. The site is part of an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The site does satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my profession 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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Irené McCormack  
Senior Planning Inspector

18<sup>th</sup> July 2023