



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316705-23

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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>	Portmarnock South, Portmarnock, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	RZLT076/22
<b>Appellant(s)</b>	Portmarnock Real Estate Development
<b>Inspector</b>	Rachel Gleave O'Connor

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## **1.0 Site Location and Description**

- 1.1. The subject site is located to the south and east of the existing residential areas surrounding Portmarnock Station, bounding the recently constructed estates at The Park and Skylark Park View to the north and west, with agricultural fields to the south and the rail lines to the east. It is comprised of undeveloped fields, part of which is currently under construction in accordance with development consent for the lands. The lands are part of a wider landholding and development area which was divided into Phases 1A, 1B, 1C, 1D and 1E. It is Phases 1D and 1E / future phases that are subject to this appeal.

## **2.0 Zoning and other provisions**

- 2.1. The site it is zoned RA – Residential Area, and are also subject to a Map Based Specific Objective LAP.9A which confirms that the lands are subject to a Local Area Plan, under the Fingal County Development Plan 2023-2029. There is also a Recorded Monument situated to the south east of the site RMP DU015-055, as well as three to the north of the site (DU015-136001,2&3 extensive later medieval settlements) and the site is within the zone of notification for RMP DU015-130.

## **3.0 Planning History**

- 3.1. ABP 312112-21 – Phase 1D – SHD application (9<sup>th</sup> May 2022) for development comprising 172no. residential units, Skylark Park, upgrades to interim pumping station, permanent road connection south to Moyne Road and all associated and ancillary site development works. Currently subject to Judicial Review.
- 3.2. Adjacent area:
- 3.3. F13A/0248 – Phase 1A – permission granted on 29<sup>th</sup> July 2014 for development comprising 101no. dwellings including vehicular access onto Station Road, extension to the existing footpath and cycle along Station Road and all associated and ancillary site development works. Phase 1A is now complete and fully occupied.
- 3.4. ABP 300514-17 – Phase 1B – SHD planning permission granted on 23<sup>rd</sup> March 2018 for development comprising 150no. residential units, vehicular access off Station Road, 2 no. areas of open space, integration of the northern Recorded Monument

(RMP-DUO 15:014), cycle/walking route along Station road, a detention pond, a temporary foul water pumping station and wastewater storage tank and a regional wetland area located to the east alongside Strand road and all associated and ancillary site development work. Development completed in 2021.

- 3.5. ABP 305619-19 – Phase 1C – SHD planning permission granted on 30<sup>th</sup> January 2020 for development comprising 153no. residential units, 3no. retail units, café, restaurant, medial / community unit (Local Centre) and all associated and ancillary site development works. Under construction and expected to be completed by January 2023.

#### **4.0 Submission to the Local Authority**

- 4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. The submission set out the following key points for why the subject lands do not meet the qualifying criteria set out in Section 653B of the Finance Act 2021 for inclusion on the Draft Residential Zoned Land Tax Maps:

- Phasing requirements prescribed by the Portmarnock South Local Area Plan are restricting the development of much of the subject lands due to their staggered and staged nature, limiting progress to approximately 150no. units per Planning Application. The ‘statutory designation’ of the LAP’s phasing strategy ultimately acts to ‘preclude development’ in this instance.
- The place of development is also being stymied by the ongoing judicial review of the Strategic Housing Development proposed and permitted by An Bord Pleanála under ABP Reg. Ref. ABP 312112-21 (which affects part of the subject landholding).
- Key elements of infrastructure, such as Skylark Park and the ‘route connecting to Moyne Road through open space lands and associated pedestrian/cycle links’ are prescribed by the LAP (thereby making them ‘statutory designations’) and needed to unlock Growth Area 2. However, they feature as key elements of the Strategic Housing Development under judicial review. Therefore, they cannot be delivered until such time as a ruling is made, and thus, ‘preclude development’.

- The forthcoming expiration of the LAP in April 2023 adds further uncertainty and the risk of policy lacuna at the subject lands with no local planning policy context to inform the future vision of Portmarnock South, thereby inhibiting the prospect of development.
- A lack of capacity in existing foul drainage infrastructure and delays with respect to the delivery of the Portmarnock Bridge Pumping Station mean that the subject lands cannot access or connect to the foul drainage network.
- The judicial review of the referenced SHD has brought the status of the Portmarnock South Local Area Plan into question. Consequently, notwithstanding the above, there are concerns with the ultimate validity of the Plan being assessed by the judiciary. Therefore, further development of the subject lands would be at risk and cannot be pursued with any form of clarity or certainty until the legal proceedings associated with the review are completed.
- Recorded Monuments and Places and their zones of notification are present at the subject lands.

## 5.0 Determination by the Local Authority

- 5.1. Fingal County Council consulted with Uisce Éireann, who confirmed that with respect to water networks, the site is serviceable subject to developer led infrastructure upgrades. With respect to wastewater, Uisce Éireann confirmed that developer provided infrastructure will be required to connect the area to the network. It stated that the surrounding networks from new estates are not yet on their GIS and the Planning Authority may have knowledge regarding the same, and that full development of the area may require the completion of the Portmarnock Bridge Pumping Station.
- 5.2. The internal water services department within the authority stated that there are services in the vicinity, and it is reasonable to expect such works to be included at part of any future planning application. The authority states that the legislation does not provide any exclusions for land on the basis of a phasing schedule set out in a development plan or local area plan unless the phasing is related to the provision of an identified piece of infrastructure without which the land would not meet the criteria

set out in s.653B of the TCA 1997. Assuming the land meets the criteria in s.653B and the phasing is being utilised as a land management policy, it is considered to fall within scope.

- 5.3. With respect to roads, the provisions within the RZLT Guidelines are noted. With respect to phasing, it is noted that the land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development. The land is serviced, or it is reasonable to consider that it may have access to services. The existing non-residential use of the lands are not considered to benefit from the exclusions set out in the guidelines.
- 5.4. With respect to archaeology, it is noted that while the subject land includes some archaeology in the southeast corner of the site, only land that cannot facilitate housing development due to the presence of significant archaeological remains should be taken out of scope. The extent and size of this landbank and the location of the archaeology within it are such that it would not render the land bank unable to facilitate any housing development (subject to a planning application) and they remain in scope.
- 5.5. The local authority determined that the site was in scope and should remain on the map.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- Since acquiring the lands the developer have actively and sequentially been developing the lands in accordance with the LAP. The LAP requires the lands to be developed on a phased basis. Section 11.3 – Phasing and Implementation – Linking Development to Infrastructure of the LAP states that ‘planning applications for residential development shall generally not exceed 150 units to facilitate detailed assessment of each planning application; unless clear justification for exceeding this number is demonstrated by the developer on a case-by-case basis and avoiding piecemeal or remote parcels of development’.

- Very significant works are required to be undertaken to provide adequate wastewater services (i.e. the Portmarnock Pumping Station) to facilitate the development of these lands. These works were not in place as of 1<sup>st</sup> January 2022, therefore, the subject lands must be considered 'not in scope'. Significant works are required by Irish Water on lands outside the control of the landowner to connect the land to foul sewerage drainage with capacity to facilitate residential development. Irish Water have indicated capacity concerns. Phase 1D was granted planning permission with an interim pumping station until such time as Irish Water construct their permanent Portmarnock Pumping Station. It is understood that the final phases (Phase 1E and 1F) of development at the subject site are likely to be dependent on the permanent Portmarnock Pumping Station being either constructed or, at the very least, going to construction. Irish Water have sought permission for a Wastewater Pumping Station, which is currently subject to appeal and with ABP ref.314663-22.
- Recorded monuments and archaeological features are present on the lands. Furthermore, the presence of other significant archaeological features have been identified during development of the previous phases. As such the presence of additional significant archaeology cannot be ruled out. The subject lands have a high potential for the discovery of further archaeological features. Future phases of development have not yet been subject to geophysical surveys or test trenching which create a significant risk for the future development of these lands.

## 7.0 **Assessment**

- 7.1. The appellant raises the matter of phasing requirements under the LAP. The RZLT Guidelines address this issue from page 23, and specifically in relation to 'tier 2' lands, serviceable within the period of the development plan. These subject lands can be considered 'able to connect' in my view given the location and proximity to existing servicing provision surrounding the site, and I specifically address wastewater networks below. As such the lands would be considered in scope.

- 7.2. Uisce Éireann's wastewater treatment capacity register confirms that with respect to Portmarnock there is available capacity, and a Wastewater Treatment Plant (WWTP) Project is underway. It is acknowledged in Uisce Éireann's response to the Local Authority (as noted above) that the development of the subject lands may rely upon the completion of the Portmarnock Bridge Pumping Station. As pointed out by the appellant, a planning application has been submitted by Uisce Éireann for the WWTP and is currently subject to appeal to An Bord Pleanála. Therefore, the final grant of planning permission for the WWTP is outstanding. However, Uisce Éireann confirm that temporary measures are in place as of the current date. While in future the WWTP may be required to serve the area, the current position is that there is capacity, albeit through temporary provision. The site is situated adjacent to existing networks, and it is possible to connect to water infrastructure. While the appellant states that works to facilitate the final pumping station solution are required on lands outside of the developers ownership, it is not suggested that these lands are in private ownership, and where works are required through public lands in the control of the local authority, land may be considered in scope.
- 7.3. With respect to the presence of archaeology on the site and the overlapping Zone of Notification for Recorded Monuments, the position of the recorded monuments on the site is identified by entry onto the Sites and Monuments Record. So it would be reasonable to conclude that its location and surrounding zone of notification affect the physical condition of that specific part of the site to an extent that would preclude the provision of housing there. This conclusion is consistent with the advice on significant archaeology in section 3.1.2 of the RZLT guidelines. It is therefore recommended that these parts of the site be omitted from the map under section 653B(c) of the act.
- 7.4. With respect to the current Judicial Review on the lands and the developers record of progressing development of the lands, these matters do not qualify as criteria that would render the lands 'not in scope' and as such do not inform this assessment.

## 8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority in part by directing that the position and zone of notification around the Recorded Monument



situated to the south east of the site RMP DU015-055, as well as three to the north of the site (DU015-136001, DU015-136002 & DU015-136003 extensive later medieval settlements) and the zone of notification for RMP DU015-130 as it overlaps the site, as identified on the Sites and Monuments Record, be omitted from the Residential Zoned Land Tax Map and that the remainder of the site be included on the map.

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, particularly in relation to archaeology, while the site is considered in scope for the purposes of the RZLT map, those areas within it that relate to Recorded Monuments are not in scope and should be removed from the map.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Rachel Gleave O'Connor  
Senior Planning Inspector

25 May 2023