



An
Bord
Pleanála

Inspector's Report ABP-320335-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Fosterstown North, Dublin Road/R132, Swords, Co. Dublin

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZTL-24-12

Appellant(s)

J. Murphy (Developments) Limited.

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Fosterstown North, Dublin Road/R132, Swords, Co. Dublin (Parcel ID FL0000002377) are located to the south of Swords town centre. The lands have direct frontage onto the R132 to the east and Boroimhe Willows to the south. The lands are currently under grass, as are the lands to the north of the site. The lands adjoin residential development to the south and west.

2.0 Zoning and Other Provisions

The relevant plan is the Fingal County Development Plan 2023-2029.

- The site is zoned RA-Residential Area, to provide for new residential communities subject to the provision of the necessary social and physical infrastructure.
- Residential is listed as permitted in principle on zoned RA lands, as per page 499 of the Plan.
- Mapped objective 40 states: 'Provide active open space facilities in the form of playing pitches adjacent to the school site'.
- The site is located in MP8.C Masterplan Area. Under Table 2.17 'Operational Masterplans' MP8.C comprises part of the Swords Masterplans.
- The site is located within Dublin Airport Noise Zone C. Table 8.1 'Aircraft Noise Zones' notes that a noise assessment must be provided with new development to demonstrate that noise guidelines are met.

The site is located in the lands of Part C: Fosterstown of the Swords Masterplans published May 2019.

- Under the masterplan, the site will accommodate residential development, playing pitches and a public plaza.
- Vehicular access to the masterplan area is via the Fosterstown link road from Pinnock Hill Roundabout to Forest Road. Vehicular access to the site is also shown from the Boroimhe Laurels and Willows residential areas.
- The site is designated for development in Phase 1 -pre- metro, and Phase 3 -post-metro.

3.0 Planning History

PA Ref. RZLT077-22, ABP-316489-23: On the 21 August 2023 the Board decided to confirm the local authority determination to include the site in the RZTL map.

SHD ABP Ref. TA06F.313331: On the 17 April 2024 the Board decided to refuse planning permission for the construction of 645 no. units at the subject site. Permission was refused on design basis, the entrance arrangements onto the R132 and the prematurity of the development pending the delivery of the Fosterstown Link Road.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that there is no road access and the phasing provisions of the Swords Masterplans.

5.0 Determination by the Local Authority

The local authority determined that:

In pursuance of its functions under the above-mentioned Act, as Planning Authority, the County Council for the County Fingal decided to include the above land on the final map of the Residential Zoned Land Tax for the reasons outlined overleaf.

Reason:

It has been determined that the site in question fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1992 (as introduced by the Finance Act 2021) for inclusion on the RZLT map for the following reasons:

- 1) 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.
- 2) The land is serviced, or it is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to

be development and for which there is services capacity available sufficient to enable housing to be developed.

- 3) 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 archaeological or historic remains.
- 4) The existing non-residential use of the lands that are the subject of the submission are not considered to benefit for the exclusions set out in the Finance Act 2021 at Section 653B(c).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Development of the site is predicated on the provision of the Fosterstown Link Road, which is located on third-party lands.
- The decision under the recent SHD illustrates that the site cannot be developed until access from the north is provided. The planning permission that includes the Fosterstown Link Road is the subject of Judicial Review.
- Part of the site is phased for development post-metro. The Phase 1 lands are reliant on the delivery of road and public transportation infrastructure. Only 25% of Phase 1 lands can be developed pre-metro.

7.0 Assessment

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”.

The subject site, as shown in Figure 2.1 of the appeal statement, was the subject of a previous RZLT determination under ABP-316489-23. Under this previous appeal, the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. Since this decision, the Board has issued their decision in respect of the SHD application under ABP 313331. This SHD was refused planning permission for design reasons, the inappropriate design of the entrance onto the R132 and because the Fosterstown Link Road had not yet been delivered. In this way, the context of the site has changed since the previous RZTL decision.

The site is zoned RA-Residential Area under the Development Plan and, therefore, meets the criteria under Section 653B(a).

The Grounds of Appeal state that the lands do not have access to road infrastructure and, therefore, do not meet the criteria under Section 653B(b) of the Act. The recent decision by the Board under ABP Ref.313331 illustrates that the site cannot be accessed from the R132, even temporarily, and that development of the site is reliant on the delivery of the Fosterstown Link Road. I note that the Fosterstown Link Road is located on lands that are not under the appellant's control. Page 24 of the RZLT Guidelines states that *“If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope”*. Drawing from the Board’s decision under ABP Ref.313331, it is reasonable to consider that the lands of the subject site cannot be developed to provide dwellings until infrastructure works, comprising the delivery of the Fosterstown Link Road, are completed on the third-party lands to the north. In this way, the site does not meet the criteria for inclusion on the RZLT map under Section 653B(b).

In respect of water infrastructure capacity, the Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 12 September 2024) indicates that there is capacity available at the Swords WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 12 September 2024) indicates that there is potential capacity available at the Greater Dublin Area Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. In this way, I consider that there is sufficient capacity in the water network to serve the site.

The Grounds of Appeal state that the site cannot be developed owing to the phasing provisions of the Swords Masterplans. The Swords Masterplans are a non-statutory plan, and I consider it relevant that the phasing provisions in the masterplan are not specifically included in the written text or mapped objectives of the Development Plan. Under the Development Plan, the site is zoned RA-Residential Area, where residential is permitted in principle. Based on the foregoing, it is reasonable to consider that the lands can be developed to provide dwellings. In this way, the site meets the criteria under Section 653B(a) of the Act.

I note that under the Development Plan the site is within Aircraft Noise Zone C. With reference to Table 8.1 of the Plan, I do not consider that this objective precludes the provision of dwellings at the site. There are no other physical conditions at the site that would preclude the provision of dwellings, therefore, the site meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

8.0 Recommendation

Having regard to the foregoing I consider that the lands identified as Fosterstown North, Dublin Road/R132, Swords, Co. Dublin (Parcel ID FL0000002377) do not meet the qualifying criteria set out in section 653B(b) of the Taxes Consolidation Act 1997, as amended. The recent decision under SHD application ABP Ref. 313331 confirms that the site cannot be accessed from the R132 and that access to the site is reliant on the delivery of the Fosterstown Link Road, which is located on lands under Third-

Party control. I recommend that the local authority's determination be set aside and the lands excluded from the RZTL map.

9.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning 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 Fosterstown North, Dublin Road/R132, Swords, Co. Dublin (Parcel ID FL0000002377) are located on lands zoned RA-Residential Area and are, therefore, considered in scope of section 653B(a). UE capacity registers published June 2023 and accessed 12 September 2024 indicate that there is capacity in the water network to serve the site. The Board's decision to refuse planning permission for the construction of 645 no. dwellings under ABP Ref. 313331 illustrates that the delivery of housing at the site is reliant on the construction of the Fosterstown Link Road. Access to the site from the R132, even temporarily, is considered inappropriate under this recent decision. The lands designated for the Fosterstown Link Road are under Third-Party control. Based on the foregoing, it is reasonable to consider that the site does not have access to the road network and does not meet the criteria under Section 653B(b) of the Act. The phasing provisions of the Swords Masterplans do not preclude the provision of dwellings on the site as this is a non-statutory Plan, and there are no equivalent phasing provisions in the Development Plan. No physical constraints or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Fingal County Council

Local Authority Reference Number: FIN-C657-RZTL-24-12

Appeal by J. Murphy (Developments) Limited care of John Spain Associates 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 Fingal County Council on the 27 day of June 2024 in respect of the site described below.

Lands at: Fosterstown North, Dublin Road/R132, Swords, 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 set aside the determination of the local authority and allow the appeal in relation to the lands identified as Fosterstown North, Dublin Road/R132, Swords, Co. Dublin (Parcel ID FL0000002377).

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 Fosterstown North, Dublin Road/R132, Swords, Co. Dublin (Parcel ID FL0000002377) are located on lands zoned RA-Residential Area and are, therefore, considered in scope of section 653B(a). UE capacity registers published June 2023 and accessed 12 September 2024 indicate that there is capacity in the water network to serve the site. The Board's decision to refuse planning permission for the construction of 645 no. dwellings under ABP Ref. 313331 illustrates that the delivery of housing at the site is reliant on the construction of the Fosterstown Link Road. Access to the site from the R132, even temporarily, is considered inappropriate under this recent decision. The lands designated for the Fosterstown Link Road are under Third-Party control. Based on the foregoing, it is reasonable to consider that the site does not have access to the road network and does not meet the criteria under Section 653B(b) of the Act. The phasing provisions of the Swords Masterplans do not

preclude the provision of dwellings on the site as this is a non-statutory Plan, and there are no equivalent phasing provisions in the Development Plan. No physical constraints or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

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.

Sinéad O'Connor

Planning Inspector

Date: 13 September 2024