



An  
Bord  
Pleanála

## Inspector's Report ABP-320386-24

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### 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

Lands at Darcystown, Balrothery, Co. Dublin

### Local Authority

Fingal County Council

### Planning Authority Reg. Ref.

FIN-C657-RZLT24-27

### Appellants

Dean Swift Property Holdings  
Unlimited Company.

### Inspector

Sinéad O'Connor

## **1.0 Site Location and Description**

The lands identified as Lands at Darcystown, Balrothery, Co. Dublin (Parcel ID FL0000001999) are located in the southeast of Balrothery. The lands accommodate 10 no. dwellings at the northwest corner of the site comprising the Garrai Linn development. The remainder of the site is under grass. To the north, the site adjoins the Ringfort and Balruddy residential developments. To the east, the site adjoins the Ringfort View Road.

## **2.0 Zoning and Other Provisions**

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

- The lands are zoned RS-Residential – to provide for residential development and protect and improve residential amenity, as per Sheet No. 4 of the Plan.
- Residential is listed as permitted in principle on zoned RS lands, as per page 505 of the Plan.
- The site is not the subject of any mapped or written policies or objectives.

## **3.0 Planning History**

PA Ref. F13A/0322: On 3 December 2013 permission was granted for the construction of 10 no. dwellings at the site.

PA Ref. F14A/0488, ABP Ref. 245229: On the 10 November 2015 the Board granted planning permission for the construction of 42 no. dwellings at the subject site, as phase 2 of the Garrai Linn development. This permission was extended to 24 December 2025.

PA Ref. F16A/0550: On the 6 June 2017 planning permission was granted for alterations to the development permitted under PA Ref. F14A/0488, ABP Ref. PL 06F.245229)

PA Ref. RZLT068/22, ABP Ref. VY06F.316713: On 9 August 2023 the Board determined that the subject site met the criteria under Section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion from the map.

## **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 the bereavement of a joint landowner of the site has prevented implementation of planning permissions at the site. It is stated that the inclusion of the site on the RZLT map may reduce the commercial viability of the land, thereby preventing its development.

## **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 developed 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 from the exclusions set out in the

Finance Act 2021 at Section 653B(c).

## **6.0 The Appeal**

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

The relevant grounds of appeal are summarised as follows:

- The appellant accepts Points 1 to 3 of the LA determination.
- Point 4 of the LA determination is refuted on the basis that the site is in use as part of the landowner's agricultural business.
- The Fingal Development Plan supports the preservation and retention of market gardening in the county. The appeal emphasises the importance of agriculture and horticulture at a national level.
- There is extant planning permission on the site.
- The bereavement of a joint owner of the site has prevented the commencement of development.
- The inclusion of the site on the RZLT map may reduce the commercial viability of the land, thereby preventing its development

## **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 appeal submission has raised grounds that are outside of the scope of the Boards assessment including issues surrounding the bereavement of a joint owner of the site and financial matters. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing the implications of bereavement or financial matters. In respect of the extant planning permission at the site, Chapter 8 of the RZLT guidelines provides details in respect of the deferral of payment of RZLT, however, these matters are outside of the scope of the Board’s assessment.

Under ABP Ref. VY06F.316713 the Board determined that the subject site met the criteria under Section 653B of the Taxes Consolidation Act 1997, as amended, for inclusion on the RZLT map. While a new Development Plan has been adopted since the previous LA determination, the site retains a RS-Residential land use zoning. I consider that the context and physical characteristics of the site have remained unchanged since the Board’s previous determination.

The appellant states that the lands are in agricultural use and, therefore, are out of scope for inclusion on the RZLT map.

The site is zoned RS-Residential under the Development Plan and, therefore, meets the criteria under Section 653B(a)(i) of the Act. Commercial development is only excluded on lands zoned primarily for residential use where the trade or profession being undertaken is subject to commercial rates, as per Section 653B(i) of the Act. I note that page 11 of the Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022 (RZLT Guidelines) states that *“Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates”*. As agriculture is not subject to commercial rates, I do not consider that the site meets the criteria for exclusion under Section 653B(i) of the Taxes Consolidation Act 1997, as amended (the Act).

In respect of site services, I note that the site immediately adjoins the Ringfort View Road and it is reasonable to consider that the site is able to connect to this road. The Uisce Eireann (UE) waste water capacity register published June 2023 (accessed 10 September 2024) does not give capacity information in respect of Balrothery. The

register indicates that there is capacity available in the Barnageeragh WWTP, which serves Balbriggan and Skerries. Based on the geographical location of the site relative to these towns and the WWTP, it is reasonable to consider that wastes arising from the site will be treated in the Barnageeragh WWTP. The UE 10-year Water Supply Capacity Register Published June 2023 (accessed 10 September 2024) indicates that there is capacity available in the Greater Dublin Area Water Resource Zone with level of service improvement required. These works would not preclude development or inclusion on the RZLT map with reference to page 8 of the RZLT Guidelines, which sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Based on the foregoing, I consider that the site meets the criteria for inclusion in the RZLT map under Section 653B(b) of the Act.

There are no 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 Lands at Darcystown, Balrothery, Co. Dublin (Parcel ID FL0000001999) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final map. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT 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 lands at Darcystown, Balrothery, Co. Dublin (Parcel ID FL0000001999) located on lands zoned RS-Residential are considered in scope of section 653B(a). The use of the lands of agriculture does not meet the criteria for exclusion from the RZLT map under Section 653B(i) of the Act. The lands are located immediately adjoining Ringfort View Road and the UE capacity register indicates that services are available and that there is sufficient capacity to serve the lands. No 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-RZLT24-27

**Appeal by** Dean Swift Property Holdings Unlimited Company 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:** Lands at Darcystown, Balrothery, Co. Dublin

### **Decision**

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as lands at Darcystown, Balrothery, Co. Dublin (Parcel ID FL0000001999) on the final map.

### **Reasons and Considerations**

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning 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 lands at Darcystown, Balrothery, Co. Dublin (Parcel ID FL0000001999) located on lands zoned RS-Residential are considered in scope of section 653B(a). The use of the lands of agriculture does not meet the criteria for exclusion from the RZLT map under Section 653B(i) of the Act. The lands are located immediately adjoining Ringfort View Road, and the UE capacity register indicates that services are available and that there is sufficient capacity to serve the lands. No 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.*

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Sinead O'Connor

Planning Inspector

Date: 10 September 2024