



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320407-24

#### 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

Lands at Pinnock Hill, Miltonsfield, Airside, Swords (R132)

#### Local Authority

Fingal County Council

#### Planning Authority Reg. Ref.

FIN-C657-RZLT-24-05

#### Appellant(s)

October Investments (Two) Ltd.

#### Inspector

Sinéad O'Connor



## **1.0 Site Location and Description**

The lands identified as Pinnock Hill, Miltonsfield, Airside, Swords (R132) (Parcel ID FL0000003403) are located to the south of the R132. The lands are currently under grass. The lands adjoin the Airside Retail Park to the south, the Airside Business Park to the east and a hotel to the west.

## **2.0 Zoning and Other Provisions**

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

- The site is zoned MRE-Metro and Rail Economic Corridor, to facilitate opportunities for high density mixed use employment and commercial development and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor.
- Residential is permitted in principle on zoned MRE lands, as per page 492 of the Plan.
- As per Sheet No. 8 of the Development Plan, the Indicative Route for Metrolink runs along the northern portion of the site.
- The site occurs 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.
- Policy CSP29 – Promote and Facilitate MetroLink Promote and facilitate the development of MetroLink, connecting Swords to the Airport and on to the City Centre.

## **3.0 Planning History**

ABP Ref. 314724: On the 30 September 2022 a Railway Order Application was lodged in respect of Metrolink - Estuary to Charlemont via Dublin Airport. The subject site of this application includes a significant portion of the subject site.

## **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 80% of the lands are required for the provision of Metro-Link. The remainder of the site is landlocked and, therefore, cannot connect to public roads or service infrastructure.

## **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 from 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:

- The site does not meet the criteria for inclusion on the RZLT map under Section 653B(c).
- Objectives of the Development Plan indicate that the delivery of Metro-link is a key transportation objective.
- 80% of the site is precluded from development on the basis that they are part of the permanent and temporary land take for the metro link project (ABP Ref. 314724).
- The remaining site area is landlocked by metro link land-take and, therefore, cannot connect to road or service infrastructure.

## **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 lands are zoned for mixed use development including residential and, therefore, meet the criteria under Section 653B(a) of the Act.

The subject site immediately adjoins the R132 along its northern boundary and there is an existing agricultural entrance from the R132 into the subject site. The UE capacity



registers for water and wastewater services published June 2023 and accessed 11 September 2024 state that there is capacity available in these networks. However, other constraints namely the fact that the majority of the site is subject to a Railway Order Application, create impediments to appropriate roads and services connectivity. As is discussed in greater detail below, the central, western and northern portions of the site form part of the Railway Order Application for the metro link project (ABP Ref. 314724). The eastern portion of the site, which does not form part of the Railway Order Application, immediately adjoins Airside business park to the east and south and the lands of the Railway Order Application to the north and west. When assessed in isolation, the eastern portion of the site does not have direct road frontage onto the public road, footpaths or public lighting. The closest roads to this part of the site are the internal roads and car parks serving the Airside Business Park. In the absence of a public road connection, it is reasonable to consider that a connection to water services to the eastern portion of the site could not be achieved at the site without third party lands or consents. In light of the foregoing, I do not consider that the eastern portion of the site meets the criteria for inclusion in the RZTL map under Section 653B(b).

The Grounds of Appeal states that 80% of the subject site meets the criteria for exclusion from the RZTL map under Section 653B(iii) as the lands form part of the permanent and temporary land requirements for the metro link project.

The central, western and northern portion of subject site occurs within the application boundary of the Railway Order Application for metro link under ABP Ref. 314724. Drawing no. ML1-JAI-BOR-ROUT\_XX-DR-Y-01021 'Railway Works Metrolink - Property Details Airside Business Park (Sheet 2 Of 2)' and Drawing no. L1-JAI-BOR-ROUT\_XX-DR-Y-01022 'Railway Works Metrolink - Property Details Pinnock Hill Roundabout' of the Property Details Book 1 of 2 Fingal County Council available to view under ABP Ref. 314724 illustrate that it is proposed to permanently acquire the northern portion of the site for the project and to temporarily acquire the central and western portion of the site. Policy CSP29 of the Development Plan specifically seeks to promote and facilitate the metro link development, and the delivery of this project is central to the development strategy for Swords under Sections 2.2.2 and 2.7.2 of the Plan. On this basis, it is reasonable to consider that any application for residential development at the site would be considered premature pending the Board's decision



on ABP Ref. 314724. Whilst not granted, it is reasonable to consider that the areas of the site that form part of the Railway Order Application are required for transport facilities and infrastructure. Based on the foregoing, I consider that the areas of the site that form part of the Railway Order Application under ABP Ref. 314724 meet the criteria for exclusion from the RZLT map under Section 653B(iii).

There are no other physical conditions at the site that would preclude the provision of dwellings on the lands, with reference to Section 653B(c) of the Act.

## **8.0 Recommendation**

Having regard to the foregoing I consider that the lands identified as Pinnock Hill, Miltonsfield, Airside, Swords (R132) (Parcel ID FL0000003403) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended for the following reasons.

- The northern, central and western parts of the site form part of the metro link project (ABP Ref. 314724). Whilst not granted, it is reasonable to consider that an application for development on this site would be considered premature pending the Board's decision under ABP Ref. 314724. It is reasonable to consider that the areas of the site that form part of application ABP Ref. 314724 are required for transport facilities and infrastructure and, therefore, meet the criteria for exclusion under Section 653B(iii) of the Act.
- When the areas included in application ABP Ref. 314724 are excluded, the remaining eastern portion of the site cannot connect to roads or services and, therefore, does not meet the criteria under Section 653B(b).

I recommend that the determination of the local authority be set aside, and the area excluded from the RZLT map.

## **9.0 REASONS AND CONSIDERATIONS**

The lands identified as Pinnock Hill, Miltonsfield, Airside, Swords (R132) (Parcel ID FL0000003403) are located on lands zoned MRE-Metro and Rail Economic Corridor, which facilitates mixed use including residential development and, therefore, are



considered in scope of section 653B(a). The subject site immediately adjoins the R132 along its northern boundary and UE capacity registers indicate that there is capacity available in the water network to serve the site. The current Railway Order Application, which relates to the majority of the site, creates an impediment to connectivity to roads and services. The eastern part of the site that does not form part of the Railway Order Application under ABP Ref. 314724 does not have direct frontage onto any public road and, therefore, it is reasonable to consider that this area cannot connect to public infrastructure or facilities. When considered in isolation, the eastern portion of the site does not meet the criteria for inclusion on the RZLT map under Section 653B(b) of the act. The northern, central and western areas of the site are included in the land take under the Railway Order Application for the metro link project (ABP Ref. 314724). Whilst this application has not been granted, it is reasonable to consider that any application for residential development at the site would be considered premature pending the Board's decision. In this way, it is reasonable to consider that the lands that form part of application ABP Ref. 314724, as shown in Figure 3 of the appeal statement, are required for transport facilities and, therefore, meet the criteria for exclusion under Section 653B(iii) of the Act. There are no other physical conditions at the site that would preclude the provision of dwellings on the lands, with reference to Section 653B(c) of the Act.

## **10.0 Recommended Draft Board Order**

### **Taxes Consolidation Act 1997 as amended**

**Planning Authority:** Fingal County Council

**Local Authority Reference Number:** FIN-C657-RZLT-24-05

**Appeal by** October Investments (Two) Ltd. care of Brock McClure 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 Council on the 27 day of June 2024 in respect of the site described below.

**Lands at:** Pinnock Hill, Miltonsfield, Airside, Swords (R132)

### **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 Pinnock Hill, Miltonsfeld, Airside, Swords (R132) (Parcel ID FL0000003403).

### **Reasons and Considerations**

The lands identified as Pinnock Hill, Miltonsfeld, Airside, Swords (R132) (Parcel ID FL0000003403) are located on lands zoned MRE-Metro and Rail Economic Corridor, which facilitates mixed use including residential development and, therefore, are considered in scope of section 653B(a). The subject site immediately adjoins the R132 along its northern boundary and UE capacity registers indicate that there is capacity available in the water network to serve the site. The current Railway Order Application, which relates to the majority of the site, creates an impediment to connectivity to roads and services. The eastern part of the site that does not form part of the Railway Order Application under ABP Ref. 314724 does not have direct frontage onto any public road and, therefore, it is reasonable to consider that this area cannot connect to public infrastructure or facilities. When considered in isolation, the eastern portion of the site does not meet the criteria for inclusion on the RZLT map under Section 653B(b) of the act. The northern, central and western areas of the site are included in the land take under the Railway Order Application for the metro link project (ABP Ref. 314724). Whilst this application has not been granted, it is reasonable to consider that any application for residential development at the site would be considered premature pending the Board's decision. In this way, it is reasonable to consider that the lands that form part of application ABP Ref. 314724, as shown in Figure 3 of the appeal statement, are required for transport facilities and, therefore, meet the criteria for exclusion under Section 653B(iii) of the Act. There are no other physical conditions at the site that would preclude the provision of dwellings on the lands, with reference to Section 653B(c) of the Act.



*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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Sinéad O'Connor

Planning Inspector

Date: 12 September 2024