



An
Bord
Pleanála

Inspector's Report ABP-320417-24

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 Portmarnock South, Co. Dublin

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZLT-24-19

Appellant

Quintain Developments Ireland Limited

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Lands at Portmarnock South, Co. Dublin (Parcel ID FL0000002101) are located to the immediate south and east of the recent residential development at St. Marnock's Bay. The lands are currently under grass and adjoin undeveloped lands to the south. The site adjoins the St. Marnock's estate to the west and the north. The site adjoins the railway line to the west and zoned open space lands fronting Coast Road to the east.

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.
- Indicative LAP Walking/Cycle Routes and (GDA) Cycle Network Plan are shown at the site.
- The lands are subject to mapped objective LAP 9.A. Under Table 2.15: Operational LAPs', LAP 9.A relates to Portmarnock South 2013, extended to 06 July 2023.

The Portmarnock South Local Area Plan expired on 06 July 2023.

3.0 Planning History

Applications PA Ref. F13A/0248, ABP 300514-17 and ABP 305619-19 relate to residential development to the north and northwest of the subject site. These permissions facilitate development of Phases 1A, 1B and 1C of the St. Marnocks Bay development.

ABP Ref. 312112: This application relates to the eastern side of the subject site and comprises Phase 1D of the St. Marnocks Bay development. On the 09 May 2022 that Board decided to grant planning permission for the construction of 172 no. dwellings at the site.

PA Ref. RZLT076/22, ABP Ref. 316705-23: On the 09 June 2023 the Board made the decision to confirm the determination of the local authority in part and set aside the determination of the local authority and allow the appeal in part. The Board decision states that the lands of and relating to the Recorded Monuments at the site should be removed from the RZLT map and the remaining site area should be retained on the RZLT map. I note that the area of the land relating to the Recorded Monuments do not form part of the current 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 the site is not served by wastewater infrastructure. Reference is made to correspondence with Uisce Éireann (UE) and that significant works to Portmarnock Pumping Station are required to serve development at the site. The phasing provisions of the Portmarnock South LAP 2013 have prevented the appellant from obtaining planning permission for the full extent of the site.

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:

- The lands do not have access to services. Existing residential development in the vicinity is served by temporary pumping stations provided at the appellant's expense.
- Wastewater connection is being provided on a temporary basis until the permanent pumping station serving the Portmarnock area is delivered.
- The permanent pumping station was granted planning permission in June 2024 and has not yet been delivered by UE.
- Development of the land has been restricted by the phasing provisions of the Portmarnock South LAP. Since the expiration of the LAP, there has not been sufficient time to prepare and lodge a planning application for the subject site.

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”.

Under the previous RZLT appeal, ABP Ref. 316705-23, the Board made the decision to omit from the RZLT map the area containing and related to Recorded Monuments at the site, and to retain the remainder of the site. The inspectors report under ABP Ref. 316705-23 found that the subject site could connect to wastewater services and that there was sufficient capacity to serve the site, albeit through temporary provisions. This previous assessment noted that the works to upgrade the Portmarnock Pumping Station occur on lands under public control and, therefore, the appellants lands remain in scope for inclusion on the RZLT map. Since the Board made its decision under ABP Ref. 316705-23, the new wastewater pumping station and modification of Portmarnock Bridge pumping station was permitted under ABP Ref. 31466.

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

The Grounds of Appeal state that the subject site cannot connect to wastewater infrastructure and that significant works are required to the wastewater network that occur on lands outside of the appellant's control.

The subject site immediately adjoins the residential development at St. Marnocks Bay, specifically the areas of The Park, Monument View and Skylark Park View. The submission from UE dated 29 April 2024 confirms that a wastewater connection to the site is available from Skylark Park View. The submission further states that the developer would be required to provide infrastructure to connect the lands to the sewer network and that temporary measures are currently in place. It is reasonable to consider that a developer would need to provide water infrastructure to serve a new residential development, therefore, I do not consider that this requirement precludes the provision of dwellings at the site. Similarly, I do not consider that the temporary

nature of existing measures prevents the provision of a connection to the subject site. Drawing from the above, it is reasonable to consider that the site is able to connect to existing wastewater infrastructure.

On the day of the LA determination, that being 27 June 2024, UE was granted planning permission for the Portmarnock Pumping Station under ABP Ref. 31466. These infrastructure works occur on lands under the control of the local authority and, therefore, no Third-Party lands are required. Pages 24 and 25 of the RZLT guidelines state that where infrastructure works are required to connect a site to infrastructure and where these occur on local authority lands then the site is considered to be in-scope. In light of the foregoing, I consider that the subject site is in-scope for inclusion on the RZLT map.

The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 13 September 2024) indicates that there is spare capacity available at the Ringsend WWTP, based on capacity available on completion of a project currently at construction. 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 light of the foregoing, I consider that there is sufficient capacity in the wastewater network to serve the site.

For completeness, I note that the UE submission dated 29 April 2024 states that the site is able to connect to the potable water infrastructure at Monument View and Skylark Park View, immediately adjoining the site. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 13 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. With reference to Page 8 of the RZLT guidelines, these works do not exclude the site from the RZLT map. The site immediately adjoins the existing road network at St. Marnocks Bay, which has footpaths and lighting. It is, therefore, reasonable to consider that the site is able to connect to the existing roads and services.

Drawing from the above, I consider that the site meets the criteria for inclusion on the RZLT map under Section 653B(b) of the Act.

The Grounds of Appeal state that the phasing provisions of the expired Portmarnock South Local Area Plan 2013 have prevented the appellant from gaining planning

permission for the full extent of the landholding.

Page 23 of the RZLT guidelines refers to phasing requirements with reference to 'tier 2' lands that are serviceable within the plan period. It is stated that lands that adjoin a public road or existing development can be connected to services and are, therefore, in-scope. As is discussed above, the site can connect to existing services at adjoining lands and is, therefore, in scope for inclusion on the RZLT map.

The Portmarnock South Local Area Plan expired on 06 July 2023 and was not in place at the time of the LA determination on 27 June 2024. The phasing provisions of the expired LAP are not included in the Fingal County Development Plan 2023-2029. Under the Development Plan the site is zoned RA-Residential area and, therefore, meets the criteria for inclusion on the RZLT map under Section 653B(a).

The subject site does not contain any structures on the Sites and Monuments Records or Zones of Archaeological potential or any buildings on the National Inventory of Architectural Heritage or Record of Protected Structures. 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 Portmarnock South, Co. Dublin (Parcel ID FL0000002101) 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 Portmarnock South, Co. Dublin (Parcel ID FL0000002101) are located on lands zoned RA-Residential Area are, therefore, considered in scope of section 653B(a). As per the UE submission and capacity registers, the site is able to connect to existing water and wastewater infrastructure at the adjoining residential development. Works required in respect of the Portmarnock Pumping Station are located on local authority lands and can be undertaken without Third -Party lands or consents. The Portmarnock South LAP is expired and, therefore, does not preclude the provision of dwellings on the site. No capacity 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-RZLT-24-19

Appeal by Quintain Developments Ireland Limited care of Stephen Little and 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: Lands at Portmarnock South, 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 Portmarnock South, Co. Dublin (Parcel ID FL0000002101) 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 Portmarnock South, Co. Dublin (Parcel ID FL0000002101) are located on lands zoned RA-Residential Area are, therefore, considered in scope of section 653B(a). As per the UE submission and capacity registers, the site is able to connect to existing water and wastewater infrastructure at the adjoining residential development. Works required in respect of the Portmarnock Pumping Station are located on local authority lands and can be undertaken without Third -Party lands or consents. The Portmarnock South LAP is expired and, therefore, does not preclude the provision of dwellings on the site. No capacity 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