



An
Bord
Pleanála

Inspector's Report

ABP-320447-24

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 Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin.

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZLT-24-08

Appellant

MKN Properties Limited

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Lands at Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin (Parcel ID FL0000002137(part) and FL0000002469(part)) are located to the south of Swords town centre. The lands, as shown in Map 1 of the appeal statement, have frontage onto Forest Road to the west and the R132/Pinnock Hill Roundabout to the east. The lands are currently under grass. To the north, south and east the lands adjoin lands that are under grass. To the west and southwest the site adjoins residential development.

2.0 Zoning and Other Provisions

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

- The majority of 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.
- Parts of the site are zoned OS-Open Space. These areas are not included in the Fingal County Council RZTL map.
- As per Sheet No. 8 of the Development Plan, there is a Road Proposal and (GDA) Cycle Network Plan route within the northern portion of the site.
- Table 6.3 'Transportation Schemes' of the Plan lists the Fosterstown Link Road. Objective CM041 seeks to implement the transportation schemes in Table 6.3.
- Mapped objective 38 states; 'provide for well-designed housing at a density of 110-115 dwellings per hectare, which is in keeping with the masterplan and the enhancement of the character of the Key Town of Swords'.
- The site contains a mapped objective to provide a school site.
- The site occurs in MP8.C Masterplan Area. Under Table 2.17 'Operational Masterplans' MP8.C comprises part of the Swords Masterplans.

- 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.

The site occurs in Part C: Fosterstown of the Swords Masterplans published May 2019.

- Under the masterplan, the site will accommodate a school and open space, and residential development.
- Vehicular access to the masterplan area is via the Fosterstown link road from Pinnock Hill Roundabout to Forest Road.
- The site is designated for Phase 1 development.

3.0 Planning History

PA Ref. RZLT053/22, ABP Ref. 316661-23: On the 08 August 2023 the Board decided to confirm the determination of the local authority and include the site in the RZLT map.

SHD file ABP-308366-20: On the 03 February 2021 planning permission was granted to MKN Developments Ltd for the development of 278 no. units and works including the development of the Fosterstown link road. This decision is the subject of judicial review.

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 lands do not have access to public roads.
- Under the Masterplans, the lands may only be developed once essential infrastructure is provided.
- Essential infrastructure is on third party lands.
- Only 25% of the land can be development pre-metro.
- There are deficiencies in the wastewater network.

- Correspondence from Uisce Eireann confirms that extensive works are required to the wastewater network to serve the site.
- It is requested that the area of the school is excluded under Section 653B(iii)(I) as the sale of those lands (0.625ha) to the Department of Education is due to complete in January 2025.
- The lands for the Forest Road widening and Fosterstown Link Road should be excluded under Section 653B(iii)(II).

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 the road network as 2 no. public road projects are required to facilitate development, namely: Fosterstown Link Road and Forest Road Widening Scheme.
- Delivery of the Fosterstown link road is reliant on works to the Pinnock Hill Roundabout.
- Deficiencies in the wastewater network.
- Reference is made to UE correspondence from 2019 regarding the recent SHD on the site, which outlines limitations in the wastewater networks and works required to serve the site.
- Under the Swords Masterplans, essential infrastructure is to be provided prior to development of the lands.
- Masterplan phasing allows only 25% of the site to be developed pre-metro.
- The areas of the school site, Fosterstown Link Road, Fosterstown Cycle Route and Forest Road Widening Scheme should be excluded from the RZLT map

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 Map 1 of the appeal statement, was the subject of a previous RZLT determination under ABP-316661-23. Under ABP-316661-23, the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. The context and character of the site has not significantly changed since this previous determination.

The appellant states that the site cannot connect to the public road network and therefore, without essential road works, there is insufficient capacity to serve the site.

The subject site immediately adjoins Forest Road along the full extent of its western boundary. Forest Road is under the control of the LA, therefore, no third-party consents or lands would be required to connect the subject site to this road. Forest Road has both footpaths and public lighting at this location. On this basis, it is reasonable to consider that the site can connect to the public road. In respect of road projects, I note that the Development Plan does not contain any objective to widen Forest Road or to preclude development until such works are undertaken. The provision of Fosterstown Link Road is an objective of the Development Plan. I consider it relevant that Fosterstown Link Road is located primarily on lands within the control of the appellant and that the recent planning application at the site included the Fosterstown Link Road. The lands of the Pinnock Hill Roundabout are under the control of the LA. In this way, third party consents would not be required to undertake the construction of the Fosterstown Link Road at the subject site. In light of the foregoing, I consider that the site meets the criteria for inclusion on the RZLT map under Section 653B(b).

The appellant states that there are deficiencies in the wastewater network and that significant works are required to serve the subject lands.

The correspondence from UE dated 11 November 2020 confirms that a connection to the wastewater network for 278 no. units can be achieved and that further

development at the site would require upgrade works. The UE maps and correspondence included in the appeal statement indicate that there is existing wastewater infrastructure at Forest Road and along the R132 in proximity to the site. I note that works to upgrade this network would occur on lands under the control of the LA and, therefore, no third-party lands would be required. I note that page 8 of the RZLT guidelines states the following in respect of network upgrades “*A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*”. In this regard, the UE Wastewater Treatment Capacity Register published June 2023 (accessed 11 September 2024) indicates that there is capacity available at the Swords WWTP. Drawing from the above, I consider that the site meets the criteria under Section 653B(b).

Regarding potable water, I note that the UE correspondence submitted with the appeal statement dated 11 November 2020 states that a connection from the site to the public network can be made. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 11 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. As outlined above, 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 the foregoing, I consider that the site meets the criteria under Section 653B(b) of the Act.

The Grounds of Appeal state that the site cannot be development prior to the provision of essential infrastructure, as per 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 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.

The Appellant seeks the exclusions of lands from the RZLT under Section 653B(iii), specifically in respect of those areas required for road upgrades and a school.

The Development Plan includes mapped objectives for the provision of Fosterstown Link Road and cycle route, and a school at the subject site. Page 10 of the RZLT

guidelines states that following: “Where the land is zoned for residential development and specific objectives apply to provide such facilities but the extent of land required for such a use is not identified, the land will fall into scope until such time as it is developed and the relevant land will then fall out of scope”. I note that the Development Plan does not specify the extent of the Fosterstown Link Road, Fosterstown cycle route or the future school and ancillary playing pitches at the subject site. In this way, it is not possible at this stage to determine the extent or precise location of these areas within the site. I note that the widening of Forest Road is not a specific or mapped objective of the Development Plan. Drawing from the above, I do not consider that these areas meet the criteria for exclusion from the RZLT map under Section 653B(iii). 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 Lands at Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin (Parcel ID FL0000002137(part) and FL0000002469(part)) 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 is 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 Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin (Parcel ID FL0000002137(part) and FL0000002469(part)) are zoned RA-Residential Area in the Development Plan and are, therefore, considered in scope of section 653B(a). Given the location of the site proximate to existing roads and water infrastructure, it is considered reasonable that a connection to public infrastructure and facilities can be achieved. UE capacity registers indicate that there is capacity to serve the site. 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-RZLT-24-08

Appeal by MKN Properties Limited 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 Fosterstown, Pinnock Hill, Forest Road, Swords, County 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 Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin (Parcel ID FL0000002137(part) and FL0000002469(part)) 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 Fosterstown, Pinnock Hill, Forest Road, Swords, County Dublin (Parcel ID FL0000002137(part) and FL0000002469(part)) are zoned RA-Residential Area in the Development Plan and are, therefore, considered in scope of section 653B(a). Given the location of the site proximate to existing roads and water infrastructure, it is considered reasonable that a connection to public infrastructure and facilities can be achieved. UE capacity registers indicate that there is capacity to serve the site. 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: 11 September 2024