



An
Bord
Pleanála

Inspector's Report

ABP-320545-24

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

Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZLT24-18-A

Appellant

Cremona Trust

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin (Parcel ID FL0000002137(part) and PL0000002469(part)) are located to the west of the Pinnock Hill Roundabout, circa 450 metres south of Swords town centre. The lands are under grass and does not have direct frontage onto any road. The site adjoins lands that are similarly under grass on all sides.

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.
- As per Sheet No. 8 of the Development Plan, there is a Road Proposal and (GDA) Cycle Network Plan route running along the northern boundary of the subject 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.
- Table 6.3 'Transportation Schemes' of the Plan lists the Fosterstown Link Road.
- The site occurs in MP8.C Masterplan Area. Under Table 2.17 'Operational Masterplans' MP8.C comprises part of the Swords Masterplan.

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

- Under the masterplan it is proposed that the site will accommodate residential development and a hotel.
- 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 2 – development post metro. The Fosterstown link road is designated for Phase 1 development

3.0 Planning History

PA Ref. RZLT071/22, ABP Ref. 316585: On the 11 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 relates to lands to the north and west of the site: 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. It is stated in the appeal submission that this decision is the subject of judicial review.

SHD file ABP Ref. TA06F.313331 relates to lands to the south of the site: 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 the site does not have access to the road network, development is dependent on the delivery of a link road that is on third party lands and which has not yet been permitted, and the site is designated for Phase 2 - development post metro.

The submission relates to Plots A and Plots B. In this regard, please refer to the report under ABP-320548-24.

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 site does not have access to road infrastructure.
- Development at the site is dependent on the delivery of the Fosterstown Link Road.
- Reference is made to the submission by the FCC Transportation Planning Section which states that the site does not have access to the public road network required to facilitate development on the basis that the Fosterstown Link Road is not permitted or provided.

- The area of the proposed Fosterstown Link Road is under third-party control and, therefore, the lands are out of scope with reference to the provisions of the RZLT guidelines.
- The site is designated for Phase 2 development – post metro under the Fosterstown Masterplan.

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”.

There is a previous RZLT decision under ABP-316585-23 that appears to relate to part of the subject site. In this previous case, I note that the Board decided to uphold the LA determination to include Plot A in the RZLT map. Section 8.3 of the Inspector's Report in respect of ABP-316585-23 states that Plot A has road frontage onto the R132 and, therefore, has reasonable access to road infrastructure. In this regard, the current subject site differs from the lands assessed under ABP-316585-23. As per Figures 2 and 3 of the Appeal Statement, Plot A does not have direct road frontage onto the R132.

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 site does not meet the criteria for inclusion on the RZLT map as it does not have access to road infrastructure, as is required under Section 653B(b). The appellant refers to the Swords Masterplan, and states that development at the site is dependent on the delivery of the link road between Pinnock Hill Roundabout to Forest Road (referred to as the Fosterstown link road). It is stated that this link road occurs on Third Party Lands and the recent planning permission for its provision is currently the subject of Judicial Review.

The subject site does not have direct road access onto any public road. As per the Transportation Planning Report on Residential-Zoned Tax Appeal dated 08 May 2024, submitted to the LA, the site currently has no vehicular access to the public road and is due to be accessed from the Fosterstown Link Road, with reference to the Swords Masterplan. The delivery of the Fosterstown Link Road is a key transportation objective of Part C: Fosterstown of the Swords Masterplan on the basis that it is the main vehicular access point to the masterplan area. This link road has not been constructed and there is currently no planning permission in place for its construction. I note that the area of the link road occurs on Third-Party lands, therefore, this piece of infrastructure cannot be delivered by the appellant. Page 24 of the RZLT guidelines indicates that lands may be out of scope for inclusion on the RZLT map where connections to services require third-party lands or third-party development. Based on the foregoing, it is not reasonable to consider that access to roads can be provided at the site without third party consents. In this way, the subject site does not meet the criteria under Section 653B(b) for inclusion in the RZLT map.

The matter of connectivity or capacity in the water network is not discussed in the LA assessment. On the basis that the lands have no access to the public road and are surrounded by undeveloped land, it is reasonable to consider that the site cannot connect to the existing public water network without traversing third-party lands. In the absence of surety, it is reasonable to consider that the site does not meet the criteria under Section 653B(b) in respect of access to public water infrastructure.

The Grounds of Appeal state that the site is designated for Phase 2 development under the Part C of the Swords Masterplan.

The subject site is not the subject of any phasing arrangements under the Development Plan, which post-dates the masterplan. The masterplan is a non-

statutory document and, therefore, I do not consider that the phasing provisions preclude the provision of dwellings at the site. On the basis that the lands are zoned RS-Residential under the Development Plan, I consider that the site meets the criteria under Section 653B(a)(i) 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 Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin (Parcel ID FL0000002137(part) and PL0000002469(part)) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, for the following reasons.

- Plot A does not have access to and cannot be connected to the public road network. The provision of dwellings at the site, which forms part of Part C: Fosterstown of the Swords Masterplan, is reliant on the delivery of the Fosterstown Link Road.
- Owing to its distance from the road and existing development, it is not reasonable to consider that the site can connect to existing water infrastructure.

I recommend that the determination of the local authority be set aside, and the lands excluded from 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 Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin (Parcel ID FL0000002137(part) and PL0000002469(part)) located on lands zoned RA-

Residential Area are considered in scope of section 653B(a). The lands do not have access to and cannot connect to the public road network. The provision of dwellings at the site is dependent on the delivery of a link road, which occurs on third party lands. The site does not adjoin the public road or any existing development and, therefore, it is not reasonable to consider that a connection to the public water network can be provided. Based on the foregoing, the site does not meet the criteria for inclusion on the RZLT map as per Section 653(9b) of the Taxes Consolidation Act 1997, as amended.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Fingal County Council

Local Authority Reference Number: FIN-C657-RZLT24-18-A

Appeal by Cremona Trust care of SCA Planning 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: Plot A. RS Zoned Lands at Fosterstown, 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:

Select one:

The Board set aside the determination of the local authority and allow the appeal in relation to the lands identified as Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin (Parcel ID FL0000002137(part) and PL0000002469(part)).

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 Plot A. RS Zoned Lands at Fosterstown, Swords, Co. Dublin (Parcel ID FL0000002137(part) and PL0000002469(part)) located on lands zoned RA-Residential Area are considered in scope of section 653B(a). The lands do not have access to and cannot connect to the public road network. The provision of dwellings at the site is dependent on the delivery of a link road, which occurs on third party lands. The site does not adjoin the public road or any existing development and, therefore, it is not reasonable to consider that a connection to the public water network can be provided. Based on the foregoing, the site does not meet the criteria for inclusion on the RZLT map as per Section 653(9b) of the Taxes Consolidation Act 1997, as amended.

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