



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320548-24

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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

Plot B, MC Zoned Lands at Fosterstown, Swords County Dublin

#### Local Authority

Fingal County Council

#### Planning Authority Reg. Ref.

FIN-C657-RZLT24-18-B

#### Appellant

Cremona Trust

#### Inspector

Sinéad O'Connor

## **1.0 Site Location and Description**

The lands identified as Plot B, MC Zoned Lands at Fosterstown, Swords, County Dublin are located south of Swords Town Centre. The lands do not have a Parcel ID. The lands are currently under grass. To the north, the lands adjoin residential development and Lidl supermarket. To the south and east, the site adjoins lands that are under grass. The site has direct road frontage onto Forest Road to the west. Hawthorn Park residential development is located on the opposite side of Forest Road, to the west of the site.

## **2.0 Zoning and Other Provisions**

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

- The site is zoned MC – Major Town Centre, to protect, provide for and/or improve major town centre facilities. Residential is listed as Permitted in Principle on zoned MC lands.
- As per Sheet No. 8 of the Development Plan, there is a Road Proposal and (GDA) Cycle Network Plan route to the south 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.
- The site occurs in MP8.C Masterplan Area. Under Table 2.17 ‘Operational Masterplans’ MP8.C comprises part of the Swords Masterplans.
- Table 6.3 Transportation Schemes lists the Fosterstown Link Road as one of the Council’s proposals for development of the County’s transportation network.

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

- Under the masterplan, the site will accommodate 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 2 – development post metro. The Fosterstown link road is designated for Phase 1 development

### **3.0 Planning History**

PA Ref. RZLT112/22, ABP Ref. VY06F.316582: On the 11 August 2023, the Board decided to confirm the determination of the local authority (LA) to include the site in the RZLT map.

SHD file ABP-308366-20 relates to lands to the south 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-320545-24.

### **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).
- 5) It is considered that the lands zoned MC (parcel I.D. No. FL0000002469), are vacant or idle; as provided in the guidelines 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.

## **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.
- 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.
- Development at the site is dependent on the delivery of the Fosterstown Link Road.
- The lands of the Fosterstown Link Road are 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”.*

The subject site, comprising Plot B as per the Appeal Submission, was the subject of a previous RZLT determination under ABP-316585-23. The Inspectors Report under ABP-316582-23 states that Plot B has frontage along Forest Road and, therefore, it is reasonable to consider that a connection is available to roads, footpaths and public

lighting. In respect of phasing, the Inspectors Report states that the masterplan is a non-statutory document which would not preclude development at the site.

The site is zoned MC – Major Town Centre under the Development Plan. On the basis that residential development is Permitted in Principle on zoned MC lands and with reference to page 10 of the RZLT Guidelines, I consider that the site meets the criteria under Section 653B(a)(ii) 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 Masterplans, 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.

I note that the Transportation Planning Report on Residential-Zoned Tax Appeal dated 08 May 2024 states that the site is not currently served by vehicular access to the public road on the basis that, under the Swords Masterplan, the primary access to Fosterstown will be via the Fosterstown Link Road which has not been permitted or delivered. The LA in their assessment did not address the concerns raised in the Transportation Planning Report and concluded that it is reasonable to consider that the lands have access to services.

The Swords Masterplans is a non-statutory document that pre-dates the Fingal County Development Plan 2023-2029. It is notable that the Development Plan does not include any phasing arrangements in respect of the residential lands in Fosterstown with reference to the Fosterstown Link Road. Therefore, I do not consider that the absence of the Fosterstown Link Road necessarily precludes development at the site where a connection to roads and services connections can be provided at another location. For the purposes of applying Section 653B(b) of the Act, Page 23 of the RZLT Guidelines states the following: *“...where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope”*. The subject site has direct road frontage onto Forest Road at its western boundary. At this

location, Forest Road has both footpaths and public lighting. In light of the foregoing, it is reasonable to consider that the site can connect to the road network.

I consider it relevant that the subject site differs from the lands recently refused planning permission under SHD file ABP Ref. 313331 on the basis that the subject site is able to connect to Forest Road. The lands the subject of SHD ABP Ref.313331 could not connect to another public road and was considered to be reliant on the Fosterstown Link Road for connectivity to road services.

In respect of connectivity and capacity in the water network, I note that the site immediately adjoins a public road that also serves existing residential development in the vicinity. On the basis that there are existing residential developments located in close proximity to the site, it is reasonable to consider that there is foul and potable water infrastructure located at or close to Forest Road that the subject site may connect to. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 11 September 2024) indicates that there is capacity available at the Swords WWTP. 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. 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 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 is designated for Phase 2 development under the Part C of the Swords Masterplans.

The subject site is not subject to 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 therein preclude the provision of dwellings at the site. On the basis that the lands are zoned MC- Major Town Centre 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.

The site is currently under grass and does not contain any development or structures. On the basis that the adjoining lands uses comprise a supermarket and residential dwellings, it is reasonable to consider that the lands are not required for or integral to the operation of a trade or profession on the adjoining sites. With reference to the definition for vacant or idle under Section 653A of the Act, I consider that the site does not meet the criteria for exclusion under Section 653B(ii) of the Act.

## **8.0 Recommendation**

Having regard to the foregoing, I consider that the lands identified as Plot B, MC Zoned Lands at Fosterstown, Swords, County Dublin, 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 Plot B, MC Zoned Lands at Fosterstown, Swords, County Dublin are lands zoned MC – Major Town Centre, where residential is permitted in principle and, therefore, are considered in scope of section 653B(a). Under the Development Plan, the site is not subject to any phasing provisions linked to the delivery of Fosterstown Link Road. As the lands immediately adjoin Forest Road, it is reasonable to consider that the site can connect to the road network, footpaths and public lighting. There are existing residential schemes on Forest Road in proximity to



the site, therefore, it is reasonable to consider that there are public foul and potable water networks available that the subject site can connect to. UE capacity registers indicate that there is sufficient capacity in the wastewater and potable water system to serve development. The phasing provisions of the Swords Masterplan do preclude the provision of dwellings at the site on the basis that the masterplan is a non-statutory document and there are no equivalent phasing provisions in the Development Plan. No physical or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use 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-RZLT24-18-B

**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 B, MC Zoned Lands at Fosterstown, 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 Plot B, MC Zoned Lands at Fosterstown, Swords, County Dublin, 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 Plot B, MC Zoned Lands at Fosterstown, Swords, County Dublin are lands zoned MC – Major Town Centre, where residential is permitted in principle and, therefore, are considered in scope of section 653B(a). Under the Development Plan, the site is not subject to any phasing provisions linked to the delivery of Fosterstown Link Road. As the lands immediately adjoin Forest Road, it is reasonable to consider that the site can connect to the road network, footpaths and public lighting. There are existing residential schemes on Forest Road in proximity to the site, therefore, it is reasonable to consider that there are public foul and potable water networks available that the subject site can connect to. UE capacity registers indicate that there is sufficient capacity in the wastewater and potable water system to serve development. The phasing provisions of the Swords Masterplan do preclude the provision of dwellings at the site on the basis that the masterplan is a non-statutory document and there are no equivalent phasing provisions in the Development Plan. No physical or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use 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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Sinéad O'Connor

Planning Inspector

Date: 11 September 2024