



An  
Coimisiún  
Pleanála

## Inspector's Report

### ACP-323336-25

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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**

Lands at Portmarnock South, Co. Dublin

**Local Authority**

Fingal County Council

**Planning Authority Reg. Ref.**

FIN-C790-RZD-26-17

**Appellant**

Evara Limited

**Inspector**

Fergal Ó Bric

## **1.0 Site Location and Description**

The lands identified as Lands at Portmarnock South, Co. Dublin (Parcel ID numbers FL0000002101, FL0000002571 and FL0000002861) are located immediately east and south-east of the existing residential development at St. Marnock's Bay. The lands are stated to be currently undeveloped. The site adjoins the railway line to the west and open space zoned lands further to the east.

## **2.0 Zoning and Other Provisions**

The Fingal County Development Plan 2023-2029 is the relevant planning policy document.

The site is zoned RA-Residential Area, where the objective is '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 traversing 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 west and northwest of the subject lands. These permissions facilitated the development of Phases 1A, 1B and 1C of the St. Marnocks Bay development.

ABP Ref. 312112: This application related to development on the western side of the subject lands and comprises Phase 1D of the St. Marnocks Bay development. On the 09 May 2022 that Board granted planning permission for the construction of 172 residential units on the site.

PA Ref. RZLT076/22, ABP Ref. 316705-23: On the 9<sup>th</sup> day of 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.

Planning reference FIN-C657-RZLT-24-19, ABP reference 320417-24, In October 2024 the Coimisiún made the decision to confirm the determination of the local authority and that the subject lands should be retained on the RZLT map.

#### **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 following grounds:

- The site is not served by wastewater infrastructure.
- Reference is made to correspondence from Uisce Éireann (UE) that significant upgrade works to Portmarnock Pumping Station and rising main are required to serve residential development on the site.
- Additional upgrades are required to the pumping station as well as increased wastewater storage for future phases of residential development (known as phases 1E and 1F).
- The appellants have provided an interim wastewater pumping station on his own lands to serve the existing adjacent and permitted residential development until a permanent pumping station is provided by UE.
- Wastewater capacity for future residential development is dependent on the completion of the Portmarnock Bridge pumping station or the upgrading of the interim pumping station and the rising main through third party lands.
- It cannot be considered that the lands are fully serviceable within the meaning of Section 653B (b) of the Taxes Consolidation act, 1997, as amended.
- The phasing provisions of the Portmarnock South LAP 2013 have prevented the appellant from obtaining planning permission for the development of the full extent of the lands.

- The appellants were hindered from getting planning permission for the entirety of the Portmarnock South lands by virtue of the Portmarnock LAP phasing requirements and beyond the control of the appellants. We are requesting that the lands are deemed not in scope and not be included within the RZLT map.
- Circular letter NRUP 01/2024 identify an exclusion for land subject to phasing objectives within a Development Plan.
- UE within their confirmation of feasibility for the proposed development of Phase 1F of the subject lands states that water connections are feasible without infrastructure upgrades but that the wastewater connection requires upgrades to the Portmarnock Bridge pumping station to provide capacity for the existing and proposed phases of residential development.
- UE received planning permission for a pumping station on adjacent lands from Fingal County Council (FCC) in 2022 and this decision was upheld by the Board under reference 314663-22 and this decision has been judicially reviewed.

## 5.0 **Determination by the Local Authority**

The local authority determined that:

Fingal County Council determined to include the subject lands 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 is not served by wastewater infrastructure.
- Reference is made to correspondence from Uisce Éireann (UE) that significant upgrade works to Portmarnock Pumping Station and rising main are required to serve residential development on the site.
- Additional upgrades are required to the pumping station as well as increased wastewater storage for future phases of residential development (known as phases 1E and 1F).
- The appellants have provided an interim wastewater pumping station on his own lands to serve the existing adjacent and permitted residential development until a permanent pumping station is provided by UE.
- Wastewater capacity for future residential development is dependent on the completion of the Portmarnock Bridge pumping station or the upgrading of the interim pumping station and a rising main through third party lands.
- It cannot be considered that the lands are fully serviceable within the meaning of Section 653B (b) of the Taxes Consolidation Act, 1997, as amended.
- The phasing provisions of the Portmarnock South LAP 2013 have prevented the appellant from obtaining planning permission for the development of the full extent of the lands.
- The appellants were hindered from getting planning permission for the entirety

of the Portmarnock South lands by virtue of the Portmarnock LAP phasing requirements and beyond the control of the appellants. We are requesting that the lands are deemed not in scope and not be included within the RZLT map.

- Circular letter NRUP 01/2024 identify an exclusion for land subject to phasing objectives within a Development Plan.
- UE within their confirmation of feasibility for the proposed development of Phase 1F of the subject lands states that water connections are feasible without infrastructure upgrades but that the wastewater connection requires upgrades to the Portmarnock Bridge pumping station to provide capacity for the existing and proposed phases of residential development.
- UE received planning permission for a pumping station on adjacent lands from Fingal County Council (FCC) in 2022 and this decision was upheld by the Board under reference 314663-22 and this decision has been judicially reviewed.

## 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"*.

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned (i) solely or primarily for residential use, (ii) or for a mixture of uses including residential. The lands included within the RZLT map by the Local Authority are zoned RA-Residential Area which provides for residential development within the current Fingal Development Plan 2023-2029 and, therefore, are within the scope of Section 653B(a)(i) of the Act.

The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place. Section 4.1.1 of the RZLT Guidelines set out the following: iii) Services to be considered of the guidelines state that *"in assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, 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"* as per the provisions of Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

Under the previous RZLT appeal, reference number 316705-23 the Coimisiún made a determination 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. 314663-22 and is currently subject to judicial review.

Under the previous RZLT appeal, reference number 320417-24 which related to the remainder of the residential zoned lands whereby the recorded monument areas were excluded. The Coimisiún made a determination to retain the lands on the final RZLT map for 2025.

The Grounds of Appeal state that the subject site cannot be developed for residential purposes and they 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 lands immediately adjoin the residential development at St. Marnocks Bay, specifically the areas of The Park, Monument View, and Skylark Park View. The submission from UE to Fingal County Council dated the 22<sup>nd</sup> day April 2025 confirms that 'the site/land parcels that are subject of this appeal are partly serviceable. With regard to the sewer network. Phases 1D and 1E are serviceable with interim local arrangements and that phase 1F is dependent on the upgrading of Portmarnock Bridge pumping station...there is sufficient wastewater treatment capacity available There are watermains in the immediate vicinity'. 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. On this basis, it is reasonable to consider that the lands may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development are able to connect to existing wastewater infrastructure in accordance with Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

In this regard, I have consulted (on the 14<sup>th</sup> day of November 2025) the Uisce Éireann (UE) capacity register [Fingal | Wastewater Treatment Capacity Register | Uisce Éireann \(formerly Irish Water\)](#) published in August 2025, it is green for water supply indicating that there is water capacity available and that there is also capacity available in the public foul network supply, albeit there is a level of service (LoS)



improvement required for water supply. Fingal County Council determined that the lands are in scope. indicates that there is capacity available at the Portmarnock WWTP. On this basis, I consider that the lands meet the criteria under Section 653B(b).

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. On this basis, I consider that there is sufficient capacity in the wastewater network to serve the site.

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 lands are able to connect to the existing roads and services. On this basis, 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 25<sup>th</sup> day of June 2025. 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)(i) of the Taxes Consolidation Act 1997, as amended.

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, and, therefore, the lands meet the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

The appeal grounds do not raise any other matters that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines.

## **8.0 Recommendation**

Having regard to the foregoing, I consider that the lands at Portmarnock South, Co. Dublin, identified as FIN-C790-RZD-26-17 (Parcel ID numbers FL0000002101, FL0000002571 and FL0000002861) 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 at Portmarnock South, Co. Dublin, identified as FIN-C790-RZD-26-17 (Parcel ID numbers FL0000002101 FL0000002571 and FL0000002861) are located on lands zoned RA-Residential Area are, therefore, considered in scope of section 653B(a)(i). As per the UE submission and capacity registers, the lands are 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 traversing third -party lands or requiring consents. The Portmarnock South LAP is expired and, therefore, does not preclude the provision of dwellings on the site. No 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 note that the Residential Zoned Land Tax - Guidelines for Planning Authority, June 2022 (RZLT Guidelines) set out 'that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist'

## **10.0 Recommended Draft Commission Order**

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

**Planning Authority:** Fingal County Council

**Local Authority Reference Number:** FIN-C790-RZD-26-17

**Appeal by** Evara 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 25th day of June 2025 in respect of the site described below.

**Lands at:** Lands at Portmarnock South, Co. Dublin

### **Decision**

The Coimisiún 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 Coimisiún confirm the determination of the local authority and direct the local authority to retain the lands at Portmarnock South, Co. Dublin, identified as FIN-C790-RZD-26-17 (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 at Portmarnock South, Co. Dublin, identified as FIN-C790-RZD-26-17 (Parcel ID FL0000002101, FL0000002571 and FL0000002861) 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 traversing third -party lands or requiring consents. The Portmarnock South LAP is expired and, therefore, does not preclude the provision of dwellings on the site. No 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 note that the Residential Zoned Land Tax - Guidelines for Planning Authority, June 2022 (RZLT Guidelines) set out 'that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist'

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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Fergal Ó Bric

Planning Inspectorate

14<sup>th</sup> day of November 2025.