

Executive Officer,
Planning & Strategic Infrastructure Department,
Fingal County Council,
County Hall,
Main Street,
Swords,
Co Dublin
K67 X8Y2.

28 March 2024

**Re. Submission on the Annual Draft RZLT map for Fingal
Lands at Fosterstown, Swords - Parcel ID refs. FL0000002469 & FL0000002137**

Dear Sir/Madam,

On behalf of the Trustees [REDACTED]

[REDACTED], owner of the subject lands at Fosterstown, I wish to make a submission in relation to the Annual Draft RZLT map for Fingal. The lands are outlined in red and marked A and B on the enclosed Ordnance Survey Map. Proof of ownership in the form of a folio is enclosed with the submission.

This submission is made without prejudice to the underlying illegality challenged in High Court proceedings 2023/ 1122 JR, as set out in correspondence between the parties respective legal advisers.

Having regard to the provisions of the Taxes Consolidation Act 1997 and the *Residential Zoned Land Tax Guidelines for Planning Authorities (June 2022)* issued under Section 28 of the Planning & Development Act, 2000 (as amended), it is submitted that the subject lands do not meet the criteria for inclusion on the draft Residential Zoned Land Tax (RZLT) map for Swords and should be removed.

Site Location & Context

The subject lands are located in the southern environs of Swords, approximately 0.6km south of Swords town centre, 2.5km north of Dublin Airport and 1.5km west of the M1 motorway.

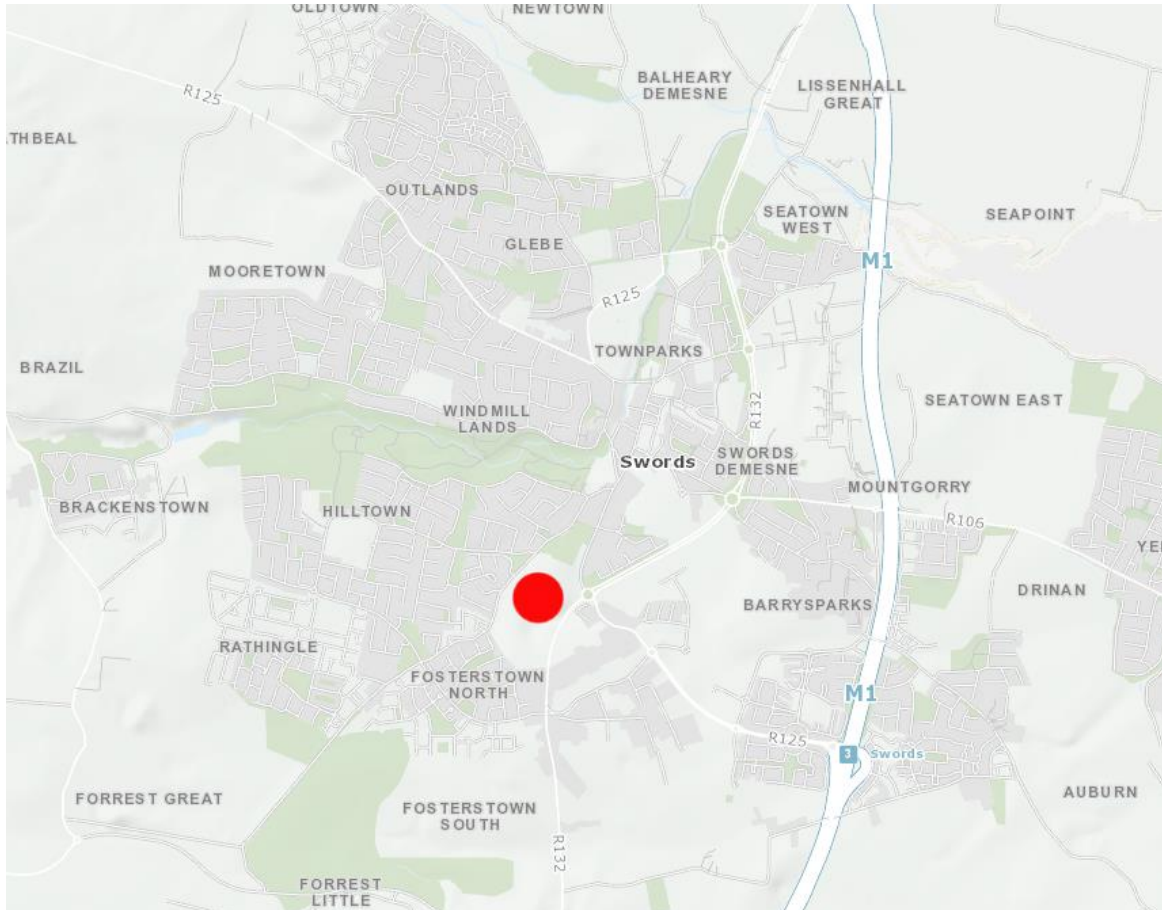


Figure 1: Context Map

The lands comprise 2 separate parcels, annotated A and B on the Location Map below, located to the north and south of the future Fosterstown Link Road, the alignment of which is in separate ownership. The lands form part of RZLT Parcel ID refs. FL0000002469 and FL0000002137.

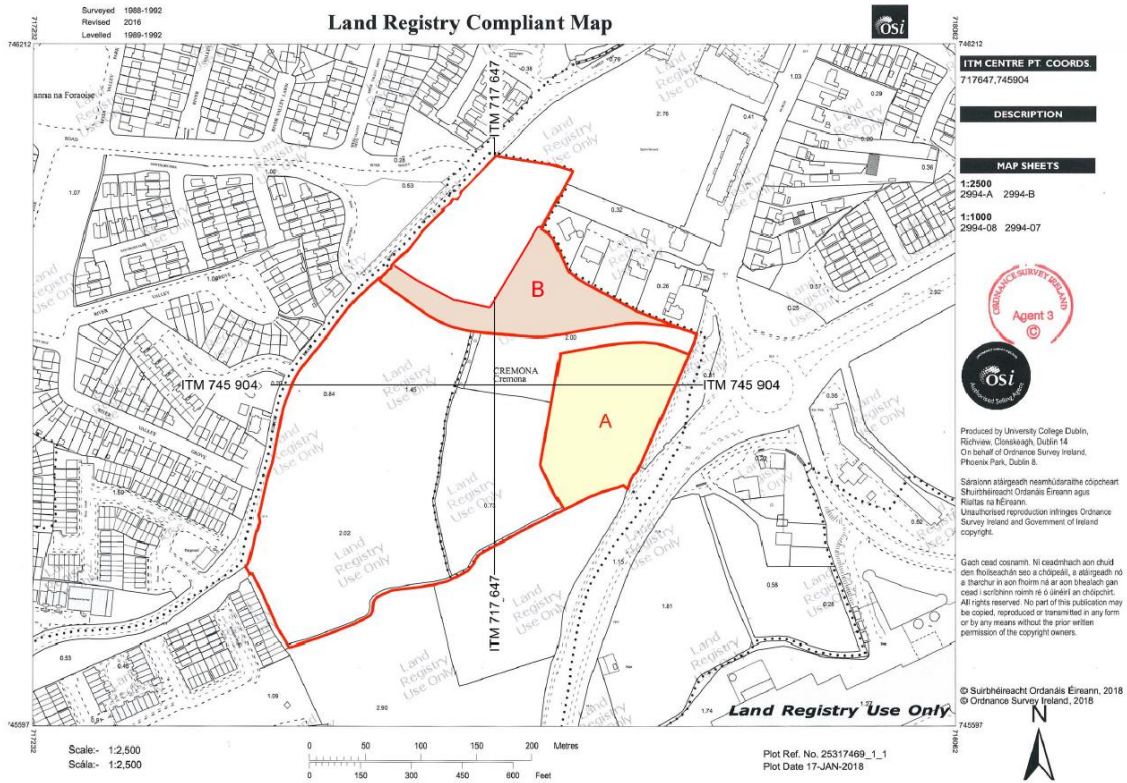


Figure 2: Location Map

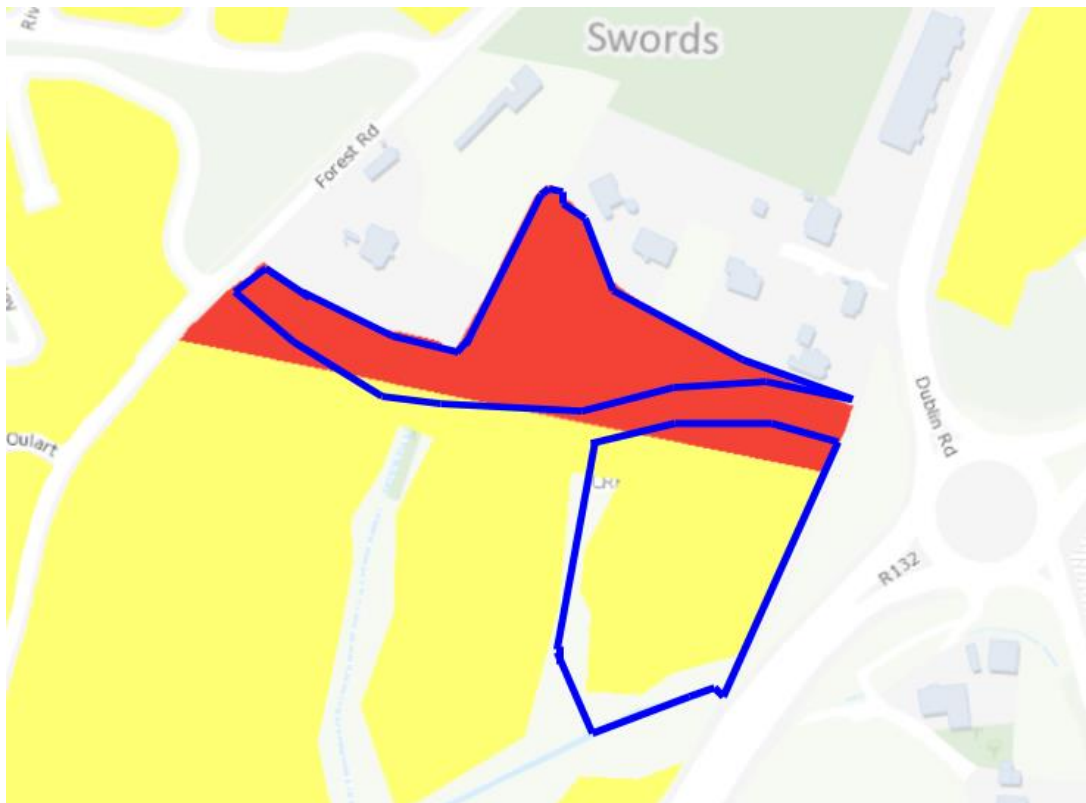


Figure 3: Extract from Annual Draft RZLT Map with lands outlined in blue

Plot A is primarily zoned Residential and Plot B is primarily zoned Major Town Centre.

Adjoining Lands (separate ownership)

Under SHD Ref. [REDACTED] permission was granted¹ for Phase 1 of a mixed-use development at Fosterstown to include part of the Link Road from Forest Road *to provide access to the proposed development and adjoining lands* (see extract from Site Notice below).

Planning and Development (Housing) and Residential Tenancies Act 2016
Planning and Development (Strategic Housing Development) Regulations 2017

Notice of Strategic Housing Development Application to An Bord Pleanála

[REDACTED] intend to apply to An Bord Pleanála for planning permission for a strategic housing development on Phase 1 lands at the townlands of Fosterstown North and Cremona, Swords, Co. Dublin. The site is bound by the Forest Road to the west.

The development will consist of:

- Construction of a mixed-use development ranging in height from 5 no. storeys to 9 no. storeys from street level.
- The development will have a total of 278 no. apartment units (125 no. 1 bedroom units, 146 no. 2 bedroom units and 7 no. 3 bedroom units) internal amenity space (218.8 sqm), 1 no. creche facility (354.4 sqm) and 1 no. retail unit (262 sqm);
- The proposed development is set out in 3 no. Blocks. Each block will contain the following:
 - Block A – ranges in height between 6-9 storeys and contains 13 no. 1 bedroom units, 45 no. 2 bedroom units and 7 no. 3 bedroom units and internal amenity space, a retail unit and a creche facility at ground floor level;
 - Block B – ranges in height between 5-6 storeys (over basement level) containing 56 no. 1 bedroom units and 48 no. 2 bedroom units.
 - Block C – ranges in height between 6-7 storeys (over basement level) in height containing 56 no. 1 bedroom units and 53 no. 2 bedroom units;
- The proposed development will also include the provision of public, communal and private open space including courtyard areas, terraces, balconies and playground areas;
- A section of the proposed public open space consists of temporary open space which will be developed on in future phases;
- Public realm improvements including the provision of footpaths, road widening, cycle infrastructure and landscaping works to the Forest Road;
- Provision of a new link road from the Forest Road to provide access to the proposed development and adjoining lands. The new link road will also include a pedestrian and cycle route to the Dublin Road/ R132;
- Parking at basement level for 104 no. cars and at surface level for 102 cars to serve the residential element of the proposed development. 5 no. car parking spaces will be provided at surface level to serve the creche;
- 214 no. bicycle parking spaces will be provided at basement level and 162 no. external spaces at ground level throughout the site;
- All hard and soft landscaping, boundary treatments and all associated site development works, signage, services, substations, green roofs, PV panels at roof level and plant.

The Site Layout Plan shows the partial link road extending eastwards from Forest Road.

¹ Subject to Judicial Review



Figure 3: Site Layout Plan for SHD Ref. [REDACTED]

In assessing the application, the ABP Inspector’s Report (page 22) noted the requirements of the Fosterstown Masterplan in relation to *inter alia* phasing of development and road infrastructure requirements:

Part C Fosterstown Masterplan provides a layout for development on lands with the Fosterstown Masterplan area, including the current site, with a new road linking an upgraded junction at Pinnock Hill to an upgraded Forest Road, as well as a linear open space along the stream and a site for a primary school in the south-western part of the site.

A phasing scheme is set out which states that development is contingent upon the provision of infrastructure including the link road, junction upgrade and school site.

Regarding the infrastructure proposed as part of the application the Inspector concluded:

In terms of infrastructure provided, I note that significant infrastructure improvements are proposed at this phase of development, including substantial improvements to the existing Forest Road, a portion of the proposed Link Road and a cycle/pedestrian access to the R132. I consider that this is sufficient to serve this Phase of development ...

The Phasing Strategy submitted with the SHD application (Statement of Consistency) identifies the completion of the Link Road occurring as a later (unspecified) phase of development.



Figure 5: Phasing Strategy

Figure 4: Phasing Strategy for SHD Ref. [REDACTED]

It is noted that Fingal County Council recommended refusal of the SHD development for reasons including material contravention of Development Plan Objective SWORDS 6, which sought to prioritise the early construction of critical infrastructure including the Fosterstown Link Road.

Submission

In accordance with Section 653B of the Taxes Consolidation Act 1997 a reference to land which satisfies the relevant criteria is a reference to land that—

(a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use, or

(ii) for a mixture of uses, including residential use,

- (b) it is reasonable to consider 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, and
- (c) it is reasonable to consider 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 known archaeological or historic remains,

Having regard to Section 653B(b) the subject lands do not meet the criteria for inclusion on the RZLT map as they do not have access to road infrastructure, identified in the statutory Development Plan as necessary for dwellings to be developed.

The lands are subject to the provisions of *Swords Masterplans Part C: Fosterstown (May 2019)*, the preparation of which was an Objective of the Fingal County Development Plan 2017-2023. The newly adopted Fingal County Development Plan 2023-2029 references the Fosterstown Masterplan as an Operational Masterplan.

The subject lands are located primarily in Phase 2 of the Masterplan (development post-Metro), as per the Phasing Map below.



Figure 5: Fosterstown Masterplan Phasing Map

The Transport Objectives map confirms that access to the subject lands will be from the Link Road connecting Forest Road and Pinnock Hill roundabout.

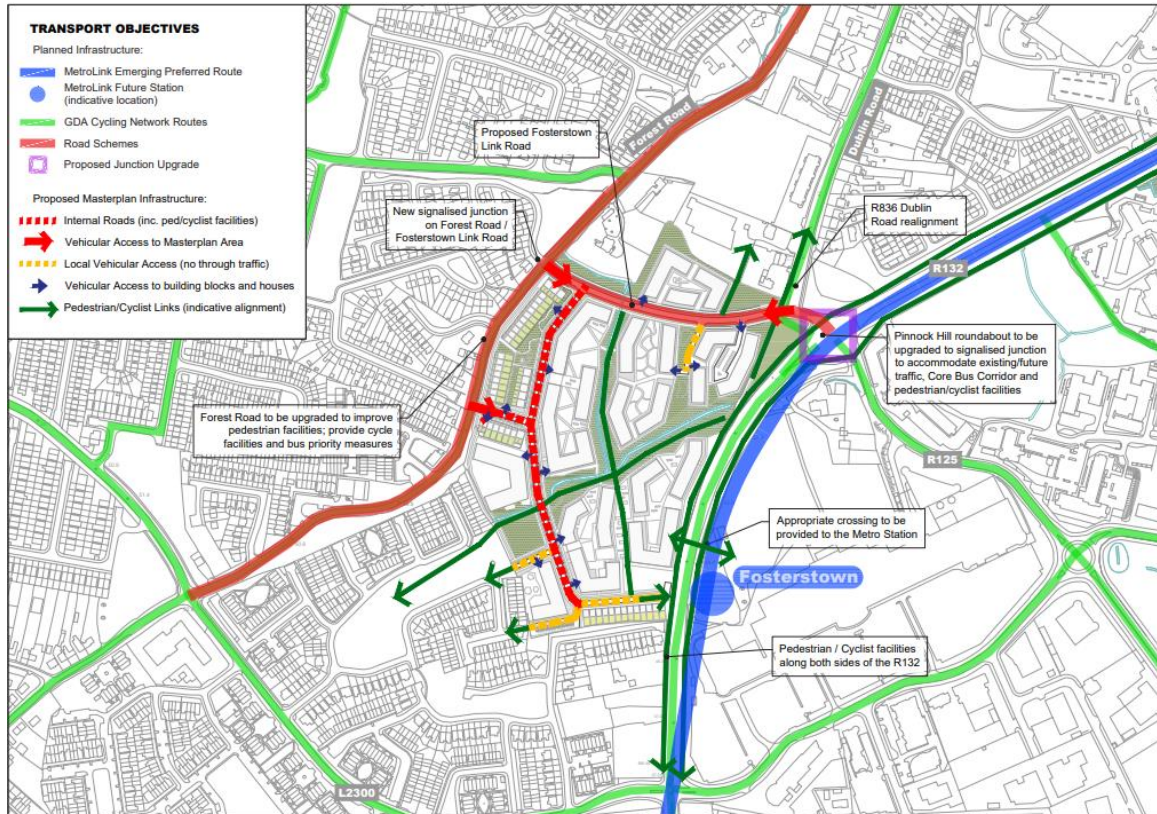


Figure 6: Fosterstown Masterplan Transport Objectives Map

The essential infrastructure requirements for Phases 1 and 2 are copied below. Notably, Phase 1 requires the development of the Fosterstown Link Road.

Development to be undertaken during Phase 1 (essential infrastructure):

- BusConnects service or similar enhanced bus service
- Pedestrian access to designated BusConnects (or similar) stops (required before commencement of Phase 2)
- Upgrade to Pinnock Hill roundabout (signalisation or similar)
- Fosterstown Metrolink Station (required before commencement of Phase 2)
- Fosterstown Link Road (new access road from the Forest Road to connect with the Pinnock Hill Roundabout)
- Provision of school and associated vehicular access
- Upgrade of the Forest Road to facilitate pedestrian and cycle movements
- North-south internal road linking school to the Fosterstown Link Road
- Realignment of Dublin Road to connect with Fosterstown Link Road, including pedestrian/ cyclist/ green infrastructure amenities.
- Pedestrian/ cyclist links to Fosterstown Metrolink station
- Upgrade Pinnock Hill Roundabout and provide improved links to Airside.

Development to be undertaken during Phase 2 (essential infrastructure):

- R132 upgrade - replace existing roundabouts with signalised junctions (or similar)
- R132 upgrade - segregated cycle lanes
- Malahide Roundabout upgrade (signalisation or similar)
- East-west green route including pedestrian and cyclist links

The development of the subject lands is therefore dependent on the delivery of the Link Road for access. As outlined earlier in this submission, the alignment of the Link Road is in third party ownership. Planning permission for part of the Link Road has been granted, which permission is subject to Judicial Review.

Section 4 of the *Residential Zoned Land Tax Guidelines for Planning Authorities (June 2022)* (hereafter referred to as ‘the Guidelines’) provides guidance relating to Implementation of the legislation, the first of which is ‘Draft Map’ (Section 4.1).

Considerations pertaining to the preparation of the Draft Map are detailed including ‘Services to be considered’ (Section 4.1.1(iii)). The text of this section is copied hereunder.

It is acknowledged that the NPF provides a definition of Tier 1 (serviced) and Tier 2 (serviceable within the period of the development plan) lands. Under Section 653B of the provisions, the definition of land in-scope for RZLT identifies lands which are connected to, or able to be connected to services as being in scope.

This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. 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.

Where the infrastructure does not meet the threshold above, the following needs to be considered:

- *Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope?*
- *Do the connections to services involve minor works, in which case the land may be in scope?*
- *Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope?* [emphasis added]

Elsewhere, the Guidelines define Serviced Land as follows:

For the purpose of inclusion on the draft or supplemental, and final map, the land must have access to or be connected to relevant services. [Emphasis added].

This implies that services should be existing.

Section 653B(b) further requires that there is “sufficient service capacity available for such development”. Only when the entire Fosterstown Link Road is built can what is sufficient or insufficient be identified and the availability of capacity assessed.

The alignment of the Fosterstown Link Road is in 3rd party ownership and its delivery is outside the control of the owner of the lands subject to this appeal. Therefore, the subject lands do not have access to the necessary road infrastructure at the current time and do not meet the criteria under Section 653B(b) for inclusion on the RZLT map.

Summary and Request

The development of the lands is subject to the provisions of the Fosterstown Masterplan, an Operational Masterplan under the Fingal County Development Plan 2023-2029.

The Fosterstown Masterplan requires significant infrastructure to be put in place to facilitate residential development on a phased basis. The subject lands are identified as Phase 2 lands, meaning they are to be developed post-Metrolink. The lands are to be accessed via a new Link Road, the alignment of which is in third party control.

The subject lands therefore cannot be developed until the necessary road infrastructure is provided. The landowner has no control over the delivery of this.

It is requested that the subject lands be removed from the Annual Draft RZLT map.

Yours sincerely

Darran Quaile