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Bord  
Pleanála

## Inspector's Report ABP-316751-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Ballytegan, Gorey, Co. Wexford
<b>Local Authority</b>	Wexford County Council.
<b>Local Authority Reg. Ref.</b>	WXF-C82-9
<b>Appellant</b>	JEM Property Holdings Ltd.
<b>Inspector</b>	Irené McCormack

## 1.0 Site Description

1.1. The site comprises lands at Ballytegan, Gorey, Co. Wexford

## 2.0 Zoning

The Gorey LAP 2017-2023 was extended under the provisions of Section 251 of Planning and Development Act, 2000 (as amended). The LAP expired on the 3rd of June 2023. The Wexford County Development Plan 2022-2028 was adopted on 13<sup>th</sup> June 2022 and came into effect on 25<sup>th</sup> July 2022.

2.1. On the 1<sup>st</sup> January 2022 the lands were zoned – Residential (R) in the Gorey LAP 2017-2023.

2.2. R2 Zoning Objective - *To Provide for Residential*

2.3. Gorey Town Gorey was designated as a Key Town in the RSES which notes that it is an important and thriving town which is well placed to accommodate additional economic growth and become more self-sustaining.

## 3.0 Planning History

### Recent

**WCC Reg. Ref. 20200374** – Permission granted on 2<sup>nd</sup> September 2020 for a mixed residential development consisting of 94 no. fully serviced dwellings & creche facility with associated parking spaces, **the development includes amendments to part of the previously approved Phase 2 Masterplan as permitted under Planning Ref. 20161456.** Comprising of 65 No. fully serviced dwellings & creche facility with associated parking spaces with Phase 2 and 29 no. fully serviced dwellings with Phase 3 at Gleann an Ghairdin. The development will consist of 4 no. three storey duplex apartment blocks each consisting of 8 no. units, of 4 no. 2 bedroom ground floor apartments and 4 no. 3 bed apartments above, 10 no. two storey 4 bedroom semi detached dwellings, 40 no. two storey 3 bedroom semi detached dwellings, 10 no. two storey 2 bedroom semi detached dwellings and 2 no. single storey 3 bedroom detached dwellings. Vehicular access, site development works and associated landscaping/communal public open spaces with connection to existing local public mains services and all associated site works at Gleann an Ghairdin, Ballytegan, Gorey, Co. Wexford.

#### **4.0 Submission to the Local Authority**

4.1. The lands are actively under construction due for completion in 2024.

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

- The local authority determined that the lands are zoned and have access to services and will remain on the RZLT.
- Only when dwellings are ready for occupation would the RZLT potentially not be liable. It is set out that the site will be surveyed again prior to final 2023 RZLT map publication.
- The local authority determined that the site was in scope and should remain on the map.

#### **6.0 The Appeal**

##### **6.1. Grounds of Appeal**

- Gleann an Ghairdin is an active site and has been for some years.
- The fencing off of the site is for the protection of staff, the site and equipment.

#### **7.0 Planning Authority Response**

7.1. The Planning Authority response was received on 15<sup>th</sup> May 2023. The PA set out:

- It is acknowledged that the estate is under construction.
- Planning permission was granted for phase 4 under pp 20201540. The majority of this area was in use as a construction compound at the time of site survey on 12/05/2023.
- For the purposes of the RZLT it is set out that those areas where there are roads, green spaces etc in place such should be removed from the RZLT. The remaining lands will remain of the RZLT map, the red or yellow colour assigned does not change.

#### **8.0 Assessment**

8.1. Section 653A of the TCA 1997 sets out relevant interpretations for the implementation of the tax. A key element of these interpretations relate to lands which fall into and out of scope for the purpose of undertaking the mapping to accompany the taxation

measure. To satisfy the criteria as identified in section 653B, land must be zoned residential use or for mixed uses including residential within a Development Plan, Strategic Development Zone Planning Scheme or a Local Area Plan. This can include lands which are identified solely or primarily for residential purposes within a zoning matrix and mixed-use zonings where residential developments are permitted in principle. The lands must 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.

- 8.2. The subject lands are zoned for residential development and serviceable, the appellant does not dispute this but argues that the lands should be removed from the map as the lands are currently under active residential development.
- 8.3. Section 4.1.1 vi) *Exclusions* of the guidelines state as identified in Section 3.1.2, there are a number of reasons why zoned and serviced land could be excluded from the map. This includes land in need of specific remediation for contamination, land which has significant known archaeological remains, land on the derelict site register, land required for infrastructure identified in section 653B(c)(iii)(I) – (VII), and exclusions for existing uses on land. These are not applicable in this instance.
- 8.4. Sections 653B(c)(i) and (c)(ii) respectively identify where certain uses may be excluded from the tax measure including reference to ‘vacant or idle’ land.
- 8.5. With respect to vacant or idle lands the guidelines state that land, which is located within mixed use zones, which permit a variety of uses including residential should only be considered to be in scope for the tax where they are vacant or idle. Setting out the text in the legislation ‘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;’ the first step is to determine if the development on the land is required for or integral to a trade or profession being carried out on the land or adjacent to the land. The second step is to determine if the development is unauthorised. If the development on the land complies with the first step and is not unauthorised, then it is not in scope and should not be included within the maps. Conversely, if development on the land complies with the first step but is unauthorised development, then it is in scope and

should be included on the maps. The lands must comply with all steps to be excluded from the maps.

- 8.6. Regarding the subject lands the fact that the site is an active construction site is not considered to meet the criteria for exclusion as set out, the construction site is temporary and ancillary to planning permission granted. Therefore, I am not satisfied that the temporary construction activity on site associated with a live planning permission is 'integral to, the operation of a trade or profession being carried out on, or adjacent to, the land' and therefore does not comply with step 1. This is reinforced in Section 3.2.3 *Consideration of Submissions on Inclusion on Maps* of the guidelines which states that "*matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions*". Accordingly, the lands are considered 'in-scope'.
- 8.7. The fact that the lands are under construction does not qualify for omitting the lands from the map under section 653B.
- 8.8. Regarding the PA's reference to the removal from the RZLT of those areas where there are roads, green spaces etc in place. These do not come under the exclusion criteria as set out above. I note section 8.2 *Deferrals* of the guidelines state that deferrals on payment of the tax are available where a commencement notice is submitted, and substantial development begins (section 653AH). Deferral of the tax is only available so long as the development is underway and completed within the duration of the planning permission. The Board has no role in relation to the payment of the tax. The administration of the taxation measure is to be undertaken by the Revenue Commissioners.
- 8.9. The appeal grounds do not raise any exclusions 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.

## 9.0 Recommendation

- 9.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## 10.0 Reasons and Considerations

10.1. Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site is considered in scope for the purposes of the RZLT map.

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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Irené McCormack  
Senior Planning Inspector  
11<sup>th</sup> September 2023