



An  
Bord  
Pleanála

## Inspector's Report ABP-317870-23.

---

<b>Type of Appeal</b>	Appeal under section 653J(2) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map
<b>Location</b>	Lands at Monivea Road/Ballyban Beg, Galway City
<b>Local Authority</b>	Galway City Council
<b>Local Authority Reg. Ref.</b>	GCLA00001252
<b>Appellant</b>	Greenway Estates Ltd.
<b>Inspector</b>	Emma Nevin

## 1.0 Site Description

- 1.1. The site it is located approximately 3 kilometres northeast of Galway city centre. The subject line is front onto the Monivea Road (R339) and the townland of Ballyban Beg. Surrounding the site is residential development including a mixture of enterprise and industrial uses in the wider environs. The has a stated area of approximately 0.31ha.

## 2.0 Zoning

- 2.1. The site is zoned objective CI as per the Galway City Development Plan 2023 - 2029, with a stated objective *“To provide for enterprise, light industry and commercial uses other than those reserved to the CC zone”*.
- 2.2. The Plan states that, *“Uses which may contribute to the zoning objectives, dependent on the CI location and scale of development, for example... Residential content of a scale that would not unduly interfere with the primary use of the land for CI purposes and would accord with the principles of sustainable neighbourhoods outlined in Chapter 3. Exceptions can be accommodated on publically owned lands on the Regeneration Sites at Headford Road and Sandy Road which can provide predominantly for residential uses in accordance with national housing policy”*.
- 2.3. The following specific development objective is also relevant, *“CI zoned lands on Monivea Road (Radharc na Greine site). Residential development on the full extent of this CI zoned site will be considered. The density and height of any proposed development on this site should align with the existing overall Radharc Na Greine Development”*.

## 3.0 Planning History

Relevant planning history:

Ref: 22/221 – Extension of duration of permission granted on 7<sup>th</sup> September 2022 for the development permitted under Ref 16/332.

Ref: 16/332 - Conditional planning permission granted by Galway City Council on the 9<sup>th</sup> June 2017, and decision to grant permission upheld on appeal to An Bord

Pleanála (ABP 61.248815) on the 6<sup>th</sup> November 2017 for a development consisting of the retention of the demolition of disused glasshouses, and permission for the demolition of an habitable house, four disused sheds, glasshouse and the habitable house known as Ballybane House. Permission granted for the construction of 52 no. houses in a mix of house types a with associated parking and open space, a commercial building (2786 sqm) incorporating a retail space, a medical practice space, a dental practice space and office space; with associated parking and open space. The works included the closure of three existing vehicular entrances to the site from Monivea Road and creation of a new main entrance to the site from Monivea Road and one shared entrance for 2 no. houses fronting Monivea Road and all associated internal access networks, landscaping, and site works.

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

- The submission requests that the plot of land be excluded from the Supplemental RZLT Map.
- The submission states that a mixed-use development (16/332) was permitted in 2017 with the commercial aspect of it forming this identified parcel ID GCLA00001252.
- While this commercial component is not constructed the wider residential element has been completed.
- The overall scheme as delayed on account of Covid-19 lockdowns and an Extension of Duration was permitted under PL.Ref. 22/221, which is due to expire in November 2025.

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

- 5.1. Galway City Council based their assessment on Section 653B of the Taxes Consolidation Act, 1997, as amended for inclusion in map including the Residential Zoned Land Tax – Guidelines for Planning Authorities (DHLGH)(June 2022).
- 5.2. It is acknowledged that planning permission exists for commercial development on this land. This land is part of a larger development which was subject to a specific development objective into the Galway City Development Plan 2023-2029 but 75%

of any development on site would be dedicated to residential use and that 25% would be dedicated to commercial use. Planning permission was subsequently granted in compliance with this objective and the residential element is complete.

- 5.3. While the stated reason for non-development of the commercial element is acknowledged, it is noted that the Galway City Development Plan 2023-2029 includes a specific development objective for this land as follows:

*“C1 zoned lands on Monivea Road (Radhard na Greine site). Residential development on the full extent of this C1 site will be considered. The density and height of any proposed development on this site should align with the existing overall Radhard Na Greine Development”.*

- 5.4. The insertion of this specific objective to allow for consideration of residential development was welcomed by the landowner who made a submission (Sub: GLWC-C2-142) during consultation on the draft development plan. It is also noted that the landowner commenced the LRD process in relation to student accommodation on this land and (LRD 05/22). While the consultation meeting was held in November 2022, no planning application has been received.

- 5.5. The land is considered to be suitable for residential development and meets the criteria set out in the legislation, notwithstanding that a permission for commercial development exists. It should also be noted that the guidance document on the Residential Zoned Land Tax states that the insurance of a grant of permission alone does not justify deferral from the RZLT.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellant raised similar issues to those in the submission to the local authority including:

- The appellant states that the Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022, sets out that; *“The principle purpose of the residential zoned development land tax is to encourage the timely activation of zoned and serviced residential development land for housing, rather than to raise revenue”*, (emphasis added).

- The appellant quotes Section 653AG(2) of the Finance Act 2021, states that *“where, in respect of a relevant site to which this section applies, a commencement notice has been lodged with a local authority in respect of development under the planning permission concerned, so much of the site as is being development for a purpose other than residential development shall, from the date of the commencement notice, or where more than one commencement notice is lodged, from the date of the first commencement notice in respect of which works comprising substantial activity commence within the timeframe specified in the notice, cease to be treated as a relevant site”*.
- A mixed-use development was permitted at ‘Radharc na Greine’ in 2017 in compliance with C1 zoning objectives. The commercial element of the permitted scheme is located to the north of the site within the area identified in Parcel ID GCLA00001252. The residential element of the ‘Radharc na Greine’ scheme has been completed. The first commencement notice for the development was lodged to Galway City Council on 14<sup>th</sup> May 2018. The construction of the overall scheme was delayed as a result of Covid-19 lockdown and a request of an Extension of Duration was subsequently permitted under PL.Ref 22/221 in September 2022. The permission will expire in November 2025.
- The appellant states that the lands identified in Parcel ID GCLA00001252 should be excluded from the final RZLT map on the basis that the lands are currently the subject of a live planning permission for commercial development under PL.Ref 16/332 as extended under PL. Ref 22/221 due to expire in November 2025.

6.2. No additional report was received from Galway City Council following the appeal.

The local authority in their response to the appeal submitted the following:

- i. Notice of Determination dated 27<sup>th</sup> July 2023.
- ii. Chief Executives Order dated 27<sup>th</sup> July 2023.

- iii. Submission Evaluation Report of Galway City Council scoping in the subject lands.
- iv. Copy of submitted made by MKO on behalf of Greenway Estates to the Draft Galway City Development Plan 2023 – 2029.
- v. Copy of submitted made by MKO on behalf of Greenway Estates to the RZLT Supplemental Map.
- vi. Copy of ABP Order PL 61.248815 (Pl. Ref. 16/332).
- vii. Copy of PL. Ref. 22/221.

## 7.0 Assessment

- 7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. The subject site is zoned 'CI as per the Galway City Development Plan 2023 - 2029, with a stated objective "To provide for enterprise, light industry and commercial uses other than those reserved to the CC zone", and while the primary land use is mixed use, the City Development Plan states that "Residential content of a scale that would not unduly interfere with the primary use of the land for CI purposes and would accord with the principles of sustainable neighbourhoods outlined in Chapter 3", therefore residential would be acceptable on this site.
- 7.2. Section 3.1.2 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, describe permissible exclusions from the map, including where land 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. The subject site is zoned for enterprise, light industry, and commercial uses, including the provision of residential. While the residential element has been constructed, this area of land appears to be currently vacant/idle. As such, the site is considered to be vacant/idle and, therefore, the site falls within scope of the land use zonings applicable to the RZLT.
- 7.3. The appellant states that the residential element of the scheme has been completed. I refer to Section 3.3.1 Criteria for Inclusion within the Scope of the Tax Measure, of

the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which states “*Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered ‘in scope’ from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 653O(1)(a) of the legislation)*”.

- 7.4. The appellant refers to Section 653AG(2) of the Finance Act 2021, in that a commencement notice has been lodged with the local authority in respect of the planning permission concerned and as such the site should cease to be treated as a relevant site.
- 7.5. I refer to Section 3.3.2 Restriction to Considering Criteria for Inclusion, of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which states “*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*”.
- 7.6. I also note Section 3.2.3 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which describes consideration of submissions on Inclusion on maps and 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*”.
- 7.7. As such, the references in the appeal to Section 653AG(2) of the Finance Act 2021, the planning permission on site, commencement of development on site, and the Covid -19 lockdowns does not fall within the criteria for consideration as set out in Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.1. The appellant states that the lands are subject of a live planning permission for commercial development under PL.Ref 16/332, as extended.

- 7.2. The Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, outlines that the purpose of the RZLT *“is to activate existing planning permissions and zonings where housing is permitted and where the land is connected to, or has access to services, but remains undeveloped. It is primarily intended to influence behaviour towards increased housing output”*, and *“The activation of existing permissions and utilisation of the resource of zoned serviced land is a key aspect of ensuring that housing development is forthcoming on residential landbanks and urban centres”*.
- 7.3. Section 4.1.1 (ii) of the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, also states; *“Where development for housing or housing and a mix of other uses has been permitted on land which falls into the scope of the tax as set out within the legislation, then default presumption should be given to considering all such lands with permissions to be within scope”*, subject to services being considered.
- 7.4. Notwithstanding the above, I note that permission has been granted on site for a commercial building which incorporates a retail space, a medical practice space, a dental practice space and office space (under Ref: 16/332 - ABP 61.248815), as part of a residential scheme for the lands. As such, I consider that part of the land, i.e. the medical practice and dental practice, is required for the provision of social, community or governmental infrastructure and facilities, which includes healthcare services.
- 7.5. Therefore, I refer to Section 653B(c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, which states;
- “(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, but which is not land—*
- (iii) that it is reasonable to consider is required for, or is integral to, occupation by—*
- (l) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare.”*



- 7.6. The Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022 also states “As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities”.
- 7.7. Having regard to the Act and the Guidelines I consider that the permitted medical practice and dental practice (under Ref: 16/332 - ABP 61.248815) on site determines that the lands subject to the medical practice and dental practice are required, integral and occupied by social, community or governmental infrastructure and facilities, which includes healthcare services, as per Section 653B (c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, and therefore these lands cannot be considered to be suitable for inclusion on the RZLT Map. As such, I recommend that the land pertaining to the medical practice and dental practice site boundary only be removed from the RZLT map.
- 7.8. I consider that the remaining part of the site is suitably zoned and serviced to allow for residential dwellings as per Section 653B of the Taxes Consolidation Act 1997, as amended, and therefore, the site can be considered in scope for the RZLT Supplemental Map.

## 8.0 Recommendation

- 8.1. I recommend that the board partly confirm the determination of the Local Authority in respect of the lands identified as GCLA00001252 as follows:
- (i) That the lands pertaining to the medical practice and dental practice site boundary granted under Planning Reference 16/332 - ABP 61.248815, only, be excluded from the Supplemental RZLT map.
  - (ii) The remaining lands as identified GCLA00001252 are considered in scope and should be included on the Supplemental RZLT maps.

## 9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that the residential element has been completed, commencement notices have been

issued in respect of this site, the site has planning permission for commercial development and should be excluded.

- 9.2. Having regard to the permitted medical practice and dental practice (under Planning Reference: 16/332 - ABP 61.248815) on site, this determines that the lands pertaining to the medical practice and dental practice site boundary granted under Planning Reference: 16/332 - ABP 61.248815, are required, integral and occupied by social, community or governmental infrastructure and facilities, including healthcare. The lands as part of this appeal identified as GCLA00001252, that form part of the medical practice and dental practice site boundary only, subject to Planning Reference 16/332 - ABP 61.248815, are, therefore, required for, or *is integral to, occupation by, social and community infrastructure* as per Section 653B (c)(iii)(l) of the Taxes Consolidation Act, 1997, as amended, and should not be included on the Supplemental RZLT maps.
- 9.3. The remaining lands as identified GCLA00001252 are considered in scope as per Section 653B of the Taxes Consolidation Act 1997, as amended, and should be included on the Supplemental RZLT maps.

*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.*

---

Emma Nevin  
Planning Inspector

16<sup>th</sup> October 2023