



An  
Bord  
Pleanála

## Inspector's Report ABP-320437-24

---

### Type of Appeal

Appeal under section 653J (1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax

### Location

Lands at Former Mall Shopping Centre, Quay Street & High Street, Balbriggan, Co. Dublin.

### Local Authority

Fingal County Council.

### Local Authority Reg. Ref.

FIN\_C657-RZT24-15

### Appellant

Rhonellen Properties Ltd

### Inspector

Fergal Ó Bric

## 1.0 Site Description

- 1.1. The site comprises a stated area of 0.41 hectares of land located at the former Mall Shopping Centre, Quay Street and High Street in Balbriggan, Co. Dublin. At present a 3-storey building occupies the site (former Mall Shopping Centre), the site has road frontage along Quay Street and High Street and is located within the centre of Balbriggan. The appeal lands identified as FIN-C657-RZT 24-15 and Parcel ID numbers FL0000002395 and FL0000001857.

## 2.0 Zoning

- 2.1. The site is zoned for MC-Major Town Centre by the Fingal County Development Plan 2023-2029 with a stated objective 'To protect, provide and/or improve town centre facilities.' Residential development is permitted in principle under this zoning objective.
- 2.2. There are no protected structures, national monuments or any other similar item indicated on the development plan maps.

## 3.0 Planning History

**PA reference number FIN-C529 RZLT 064/22**, in 2023, Fingal County Council determined that the lands should be included within the RZLT map. ABP reference 316546-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified under FIN-C529- RZLT 064/22 on the RZLT map.

**ABP Ref. No. 311095**, In November 2021 planning permission granted for development comprising of the demolition of existing buildings and construction of 95 BTR apartments (reduced by condition from 101), 2 no. commercial units and associated sit works (SHD Application). This decision was subsequently quashed by the Courts.

**ABP reference 320859**-Current proposal before the Board relates to the demolition of existing buildings, construction of 101 no. Build to Rent apartments and

associated site works. This is presently under consideration by the Board and is due for decision in early 2025.

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

- 4.1 The appellant made a submission to the Local Authority seeking to have its lands removed from the RZLT map on the basis that the site has been the subject of an SHD application that was granted planning permission by An Bord Pleanála under reference number 311095 in November 2021. This decision is the subject of a Judicial Review at present and, therefore, the appellants have been unable to develop their site.

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

The local Authority determined to include the site within the final RZLT map on the basis that the site constitutes land satisfying the relevant criteria as set out within Section 653B of the Taxes Consolidation Act 1997, as amended.

The reasons set out by the local authority are as follows:

- 1) The land is included in a Development Plan or a 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 developed and for which there is service 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 from the exclusions set out in the Finance Act 2021 at Section 653B(c).
- 5) The site is not currently on the Derelict Sites Register.

## **6.0 The Appeal**

### **Grounds of Appeal:**

- Permission was granted in November 2021 for an SHD Application consisting of seventy-seven BTR apartments and two commercial units.
- This decision is the subject of a current Judicial Review and, as such, the applicants are unable to proceed with the development as permitted by the Board. There is no timeframe for the juridical review process. Therefore, the site is outside the scope to the RZLT as the appellants are unable to develop the lands pending the hearing of the judicial review.
- By proceeding with the planning application to develop the lands, this demonstrates the intent of the developers to progress development of the lands. The judicial review situation is out of the control of the appellants.

## **7.0 Local Authority submission**

The local authority made no comment in relation to this appeal.

## **8.0 Assessment**

8.1 The comments raised in the appeal submission are noted. The lands identified for inclusion on the RZLT map are zoned MC-Major town centre - in the Fingal County Development Plan 2023-2029. A residential use is permitted in principle within MC-mixed use zoned lands. The local Authority determined that the lands are in scope and that they should remain on the RZLT map. The local Authority set out that the lands are within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The local authority set out that the site is currently vacant and idle,

within a designated urban settlement with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes.

8.2 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”*.

8.3 Section 4.1.1 ii) Review of land with planning permission of the guidelines states that *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....Significant works by the applicant to undertake the development which are a part of the plans and particulars lodged as a part of the permitted development should be given careful consideration in light of Section 4.1.1.(iii) of these Guidelines.*

8.4 Of relevance, I note that the site had been the subject of a grant of planning permission under board reference ABP 311095-21 (SHD) - Permission granted to Rhonellen Property's Limited on the 30<sup>th</sup> day of November 2021 for the demolition of the existing buildings on the site and the construction of 77 build to rent apartment units and two commercial units. This decision was subsequently quashed by the courts. I note that the case has been remitted to the Board (Board reference 320859-24) for the demolition of

the existing buildings on the site and the construction of 101 build to rent apartment units.

8.5 Under section 653B (c) (ii) of the Taxes Consolidation Act 1997, as amended, the consideration of vacant or idle arises. Based on the information submitted by the appellants and the local authority, I am satisfied that the site is vacant and idle.

8.6 With regard to the proposals for the construction of a residential development within the subject lands and currently before the Baord, this is not included in the criteria for exclusion as set out under section 653B (c) of the Taxes Consolidation Act 1997, as amended. Therefore, this ground of appeal should be dismissed.

8.7 The Planning Authority within their assessment have set out that the site is serviceable in terms of roads, footpaths, public lighting, water supply, wastewater and surface water infrastructure. Given that residential uses are permissible on MC zoned lands and the site is presently sitting vacant and idle, albeit that there is a current proposal for a residential development submitted to the Board for assessment, and no road capacity issues were raised in the local authority report or within the referral responses it received, on this basis, it is reasonable to consider that there is capacity in the water, wastewater and roads networks in the area to cater for residential development.

8.8 Based on the information submitted and available, I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B.

8.9 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.

## 9.0 **Recommendation**

9.1. I recommend that the board confirm the determination of the local authority and that the indicated site be retained on the map.

## 10.0 Reasons and Considerations

- 10.1. The lands identified as FIN-C657-RZT 24-15 and Parcel ID numbers FL0000002395 and FL0000001857, located on MC mixed use zoned lands identified within the current Fingal County Development Plan are considered in scope of Section 653B(b) of the Taxes Consolidation Act 1997, as amended. The lands are zoned MC- mixed use within the current Fingal County Development Plan where a residential use is permissible in principle. The lands are considered to be vacant and idle, notwithstanding the current proposal seeking planning permission for a residential development within the subject lands. The lands are located within an established urban area with services available, and no capacity or 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.

## 11.0 Recommended Draft Board Order

**Taxes Consolidation Act 1997 as amended.**

**Planning Authority:** Fingal County Council

**Local Authority Reference Number:** FIN-C657-RZT 24-15

**Appeal** Rhonellan Properties Ltd. Company 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<sup>th</sup> day of June 2024 in respect of the site described below:

.

**Lands at:** Lands at Former Mall Shopping Centre, Quay Street & High Street, Balbriggan, Co. 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 confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID numbers FL0000002395 and FL0000001857 under FIN-C657-RZT 24-15 should be placed on the RZLT map.

### **Reasons and Considerations**

The lands identified as FIN-C657-RZT 24-15 and Parcel ID numbers FL0000002395 and FL0000001857, located on MC mixed use zoned lands identified within the current Fingal County Development Plan are considered in scope of Section 653B(b) of the Taxes Consolidation Act 1997, as amended. The lands are zoned MC- mixed use within the current Fingal County Development Plan where a residential use is permissible in principle. The lands are considered to be vacant and idle, notwithstanding the current proposal seeking planning permission for a residential development within the subject lands. The lands are located within an established urban area with services available, and no capacity or 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 confirm that the report represents my professional 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.

---

Fergal Ó Bric  
Planning Inspectorate

2nd day of October 2024