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Metrolink Oral Hearing

Submission by Townsend Apartment Management Company in relation to College Gate apartment owners.

Over the past two and a half years, numerous apartment owners within our community have expressed grave concerns regarding the perilous financial situation that the compulsory acquisition of their properties may place them into. Specifically, the absence of Capital Gains Tax Rollover Relief on the compulsory acquisition of our properties, which will in effect leave us requiring substantial personal funding to purchase replacement properties.

Despite our efforts to address these concerns over the past two and a half years, with the TII and the Minister for Finance, we have yet to receive a satisfactory resolution.

Our concerns stem from several key points:

1) A significant portion of College Gate property owners are elderly individuals in their late sixties and seventies who function as small landlords and lack established pension plans. As a result of their age, many of these owners are ineligible for remortgaging. Moreover, a significant portion of them rely on rental income to fund their retirement.

2) The lack of Compulsory purchase rollover relief for capital gains tax exacerbates our Members financial strain. This omission forces us into the capital gains tax net against our wishes, leaving us without recourse to alleviate the burdensome tax liabilities associated with the compulsory purchase of our properties.

Moreover, the compensation we anticipate receiving will be subject to an extremely high 33% tax rate, severely limiting our ability to acquire replacement properties with the remaining funds.

For a considerable number, their retirement livelihood hinges entirely on two income sources:

1. the old age pension and 2. rental income from their College Gate property. Once the CPO compensation funds are exhausted over time, coupled with the lost rental income and the appreciating property asset, many individuals will face poverty throughout the remainder of their lives.

On the other hand, the State, after acquiring our properties, against our wishes, stands to gain significant revenue in Capital Gains Tax, amounting to many millions of Euros.

3) Architects' summary Report of site development value

Furthermore, upon the demolition of the College Gate apartment complex, the acquiring body will possess an exceptionally valuable and appreciating development site, located in the heart of South Dublin City Centre and subject to very lucrative development potential.

We have received an Architect's summary report of the potential value of the College Gate development site as follows:

Dermot P Healy
F.R.I.A.I. Dip. Arch. M.U.B.C.
Architectural & Conservation Consultant.

Date: 30.07.2021

In my opinion the College Gate site is one of the most valuable in Dublin.

In every major city where a new major transport hub is constructed, the site area over a new metro station is developed for commercial or residential use, in a high-rise block, and it is considered a prime and very lucrative development.

It is now the policy of the Irish Government and Dublin City urban planners to earmark the area bordered by Tara Street and Townsend Street including College Gate site for a cluster of "skyscrapers" to bring Dublin into line with other cities around the world where high rise city centre commercial and residential clusters are the norm.

The start of this city centre high rise policy is evidenced by the permission granted by An Bord Pleanála for a 22-storey development in nearby Tara Street. This is the precedent for a high-rise cluster in this area which will include the College Gate site, thereby increasing its valuation far beyond the present value of the 70 existing apartments in College Gate.

The College Gate site, having the advantage of being a home to a major city centre transport hub and the potential to develop the area above the proposed metro station will most probably be developed as a high-rise joint venture with developers and financiers in a deal with the TII after the apartment owners in College Gate have been paid off with as little as possible compensation.

With a plot ratio at 17.1 similar to the Alto Vetro development the site could accommodate up to 250 apartments over 20 floors creating a site value for the air space potential of College Gate in the region of Eur40m to Eur50m. This valuation does not include the site value of College Gate at ground and subterranean levels which will house the proposed Metro Link.

The purpose of this brief report is to clarify that in my view the value of the College Gate site is not the sum of the present market valuations for the 70 apartments but also the enhanced value accruing from the Government and Dublin City urban planners' policy changes in favour of high-rise buildings like the 22 storey in nearby Tara Street.

To the valuations of each of the existing apartments should be added the site value accruing from the valuation of the potential for up to 250 apartments that can be located over the proposed Metro Station which could fetch between Eur40m and Eur50m on the property market which in itself would constitute an additional value to each apartment owner in addition to the valuation of the existing 70 apartments.

Dermot P Healy F.R.I.A.I. Dip. Arch. M.U.B.C.
Architectural & Conservation Consultant.

Permission granted by An Bord Pleanála for a 22-storey development at George's Quay in nearby Tara Street.

4) The Principle of Equivalence

A grave injustice arises concerning the taxation of compensation funds under Compulsory Purchase Orders. At the heart of this issue lies the principle of equivalence. In the landmark case of Horne v Sunderland Corporation (1941), Scott L.J. underscored this principle within the framework of the Land Clauses Consolidation Act of 1845.

"The Principle of Equivalence governing compulsory purchase orders compensation dictates that property owners should be fully restored to their pre-acquisition financial state to the extent possible. Compensation must reflect the actual loss suffered by the owner, rather than simply its market value. Essentially, the owner is entitled to receive compensation that restores them, as far as monetary means permit, to the position they would have been in had their property not been acquired. In other words, the property owner gains the right to receive financial compensation not less than the loss imposed on them, in the public interest, but on the other hand no greater."

However, when an owner receives compensation equal to the loss but is subjected to 33% Capital Gains Tax, a breach of the equivalence principle occurs. This situation leaves the owner with significantly diminished funds to acquire a replacement property, thereby perpetuating injustice.

This situation could worsen. The current existing Capital Gains Tax rate on compulsory purchase scenarios stands at 33%. It is important to recognize that finalising a Notice to Treat regarding

Metrolink could take several years. There is a distinct possibility that within that timeframe the Capital Gains Tax could rise beyond the current 33%, thus amplifying the issue significantly.

5) Proposed Remedy

A proposed remedy for this injustice would be to reinstate capital gains tax rollover relief for compulsory property acquisitions, a provision that was abolished in 2002, at the stroke of the pen, by the then finance Minister. Under this new scheme, the capital gains tax amount could be held in an escrow account for each property owner intending to acquire a replacement property which would be disbursed upon the purchase date.

Capital gains tax (CGT) rollover relief would additionally serve to retain small landlords in the property market, thereby mitigating the housing crisis and preserving rental tax revenue derived from these landlords. Small landlords, constituting a significant portion of private tenancies in Ireland, are already exiting the market due to onerous tax liabilities. Moreover, the long-term financial benefits to the exchequer would be considerable.

6) In conclusion

In conclusion, the owners of College Gate request to preserve their existing financial position and retirement incomes following the pending compulsory purchase of their properties. It is fundamentally unjust to force the acquisition of an asset and then subject the compensation to Capital Gains Tax, leaving property owners in a precarious financial position with insufficient funds to secure a replacement property in order to safeguard their retirement incomes.

The owners of College Gate apartments have diligently worked throughout their lives and fulfilled their tax obligations. For many of us, it is our intention to pass down these properties to our children, affording them the opportunity to own their own homes.

The lack of Compulsory Purchase Order rollover tax relief represents a clear and glaring injustice, which can be readily rectified by reinstating such relief. There should be no difficulty in exclusively reinstating rollover relief to compulsory purchase situations.

We respectfully ask An Bord Pleanála, the TII, and our government, to address this grave injustice.

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20th March 2024

CPO Capital Gains Tax Liability

The following chartered accountant verified figures are estimated capital gains tax liabilities for small Landlords, based on the compulsory purchase of the property. *Selling costs have been marked out as the CPO acquiring body would bear these costs.

	€	€
Sale price (Scenario 1)	**450,000**	
*Less Selling Costs 1.5%	0	450,000
Cost (1999)	184,000	
Legal fees etc	5,000	
Total cost of acquisition	189,000	
Indexation 99/00	1.193	225,477
Chargeable Gain		224,523
Less: Annual Exemption		(1,270)
Taxable Gain		223,253
CGT @ 33%		73,673
Net proceeds		**376,327**

Replacement property funding required: €73,673.
Current rental (retirement income) loss: circa €30,000-annually
Less Mortgage redemption: Mortgage is a significant sum requiring clearance at closing. As a result of their age, many of these owners are ineligible for remortgaging opportunities, to replace lost rental income.

Sale price (Scenario 2)	**500,000**	
*Less Selling Costs 1.5%	0	500,000
Cost (1999)	184,000	
Legal fees etc	5,000	
Total cost of acquisition	189,000	
Indexation 99/00	1.193	225,477
Chargeable Gain		274,523
Less: Annual Exemption		(1,270)
Taxable Gain		273,253
CGT @ 33%		90,173
Net proceeds		**409,827**

Replacement property funding required: €90,173.
Current rental (retirement income) loss: circa €30,000 annually
Less Mortgage redemption: Mortgage is a significant sum requiring clearance at closing. As a result of their age, many of these owners are ineligible for remortgaging opportunities, to replace lost rental income.

Sale price (Scenario 3)	**550,000**	
*Less Selling Costs 1.5%	0	550,000
Cost (1999)	184,000	
Legal fees etc	5,000	
Total cost of acquisition	189,000	
Indexation 99/00	1.193	225,477
Chargeable Gain		324,523
Less: Annual Exemption		(1,270)
Taxable Gain		323,253
CGT @ 33%		106,673
Net proceeds		**443,327**

Replacement property funding required: €106,673.
Current rental (retirement income) loss: circa €30,000 annually
Less Mortgage redemption: Mortgage is a significant sum requiring clearance at closing. As a result of their age, many of these owners are ineligible for remortgaging opportunities, to replace lost rental income.