



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316398-23

---

<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>	Carndonagh Inner Relief Road, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	DNCC-C3-DCC-4
<b>Appellant(s)</b>	Evelyn Doherty
<b>Inspector</b>	Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The site is situated to the north of Newpark Road, west of Glennagannon River, and east and south of agricultural fields. The site itself is formed of an agricultural field. Main Street is situated to the west and the wider area is characterised by residential and commercial uses.

## 2.0 Zoning and other provisions

- 2.1. The site forms part of a wider land area that is zoned 'Opportunity Site' 'Opp 1' in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024. The site is situated within the south and east of Opportunity Site 1.
- 2.2. Table 3.1 Zoning Objectives in the Seven Strategic Towns LAP identifies an Objective for Opportunity Site 'To reserve land for specific economic developments that are appropriate in terms of mix of use and compatibility with the wider area whilst recognising features of importance that are specific to the site.'
- 2.3. Page 111 of the LAP states that:

*"Opportunity Site 1 (Map 5 refers) – Newpark Road*

*This site has dual frontage along the Newpark Road and Malin Road and comprises approximately 10.2 hectares. The site is served by pedestrian footpaths along both frontages and is within easy walking distance of the town centre. A National Monuments (DG-011-062; Souterrain) exists at the northwestern corner of the site and accordingly any development proposal will have to be accompanied by a detailed archaeological assessment and must address and secure this monument satisfactorily (e.g. by providing an appropriate buffer if necessary). The area to the east of the site is potentially at risk from fluvial flooding and accordingly development proposals must be designed having regard to this risk (e.g. by providing amenity or permeable parking areas on the eastern portion of the site, incorporating SuDS technology into development proposals etc.). Policy CN-OPP-1 refers."*

- 2.4. Policy CN-OPP-1 states:

*"It is a policy of the Council to consider proposals for residential development (over a maximum area of 1 hectare), commercial development and tourism related*

*development on Opportunity Site 1; or for development providing for a combination of some, or all, of the aforementioned uses subject to compliance with the undernoted criteria, all other relevant policies of the LAP and taken in the context of the proper planning and sustainable development of the area. A National Monuments (DG-011-062; Souterrain) exists at the northwestern corner of the site and accordingly any development proposal must be accompanied by a detailed archaeological assessment and must address and secure this monument satisfactorily. Proposals for retail development on this site shall not be favourably considered unless it can be demonstrated that the proposal would comply with the County Retail Strategy. All development proposals on this site must be designed having regard to the potential flood risk that exists to the east of the site.”*

### **3.0 Planning History**

3.1. No records of any relevant planning history.

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

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. The submission stated that when the road was created, the Council did not CPO sufficient land to create a 20m set-back required for a new non-residential entrance to the lands. The landowner widened the laneway along the western side of the subject site, to provide land for the creation of a 6m wide road with 2 no. 2m footpaths. However the owners of land plots ‘A’, ‘B’ and ‘C’ have been unwilling to provide the necessary land that would create a suitably wide road to service lands to the north of Plots ‘A’, ‘B’ and ‘C’. The subject site is landlocked from development by Plots ‘A’, ‘B’ and ‘C’. The field is used for farming and has been for many years.

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

5.1. The local authority provided an assessment of the site with reference to the RZLT Guidelines, confirming the following:

- The site is zoned as an ‘Opportunity Site’ in the Seven Strategic Towns Local Area Plan (2018-2024) and is therefore considered to be in scope.
- There is no previous planning permission on the lands.
- The construction of the Inner Relief Road along with footpath and public lighting infrastructure is provided.
- The nearest existing public sewer network is located immediately to the east of the subject site. An Irish Water main adjoins the subject site.
- There are minor ownership difficulties with widening the private road to the site, which in turn connects to the main road, however ownership disputes among land owners are not a consideration as per section 4.1.1(vii) of the Guidelines.

5.2. 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

- The Council did not create an appropriate entrance to the lands when constructing the inner relief road.
- Photographs included to illustrate the current condition of the entrance to the lands.
- The lands cannot be developed and are landlocked.
- The lands should be exempt from the RZLT until such time as a suitable Development Access and Road would be put in place. However the creation of such, is within the control of other landowners.
- Enclosures: Submission to DCC; DCC’s decision; Response to the decision; OS Maps, including historical maps of the site; copy of correspondence with Area Manager Roads and Transportation at DCC and with a T.D. Minister of State.

## 7.0 Assessment

- 7.1. The grounds of appeal states that the site is not serviced. The Council state in their assessment that there are minor ownership difficulties with widening the private road to the site, which in turn connects to the main road, however ownership disputes among land owners are not a consideration as per section 4.1.1(vii) of the Guidelines.
- 7.2. Section 4.1.1 (vii) of the Guidelines states that *“Issues relating to land ownership or the market value of the land are not required to form part of consideration in undertaking the draft, supplemental or final map review as these matters are dealt with by the Revenue Commissioners once the maps have been finalised.”* It is my understanding that this refers to the ownership of the land subject to the site. The Guidelines are clear in Section 4.1.1 (iii) Services, that where connections to services require access to 3rd party lands or 3rd party development to take place, land may be out of scope.
- 7.3. Section 4.1.1 (iii) goes on to state that *“As the tax does not require consideration of land ownership for the purpose of mapping, issues such as lack of consent for access to services across other 3rd party lands may only come to light through submissions during the public display period and may be considered at that stage, with revisions to the map being made prior to publication of the final map.”*
- 7.4. The subject site is situated immediately adjacent to agricultural lands to the south, which are in a different ownership to the subject site, and which lie between the subject site and the public road. In this sense, the site is landlocked and access would be required across third party controlled lands to achieve connection to the public road.

## 8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

## 9.0 Reasons and Considerations

- 9.1. 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 Section 4.1.1 (iii) of the RZLT Guidelines, the site is not served by existing services and would require the provision of new road and footpath infrastructure that would cross lands in third party ownership, and as such cannot be considered in-scope for the RZLT.

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

---

Rachel Gleave O'Connor  
Senior Planning Inspector

15 August 2023