



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316468-23

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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>	Atlantic View, Doonan, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	DNCC-C3-DCC-34
<b>Appellant(s)</b>	JMA Ventures Ltd
<b>Inspector</b>	Rachel Gleave O'Connor

## **1.0 Site Location and Description**

1.1. The site is situated to the south of the N56 in Doonan, adjacent to one-off houses and agricultural fields. The site is occupied by a bungalow and associated grounds.

## **2.0 Zoning and other provisions**

2.1. The site is zoned 'Established Development' in the Seven Strategic Towns Local Area Plan (Donegal Town) 2018-2024. The land use zoning objective for 'Established Development' areas allows for residential development.

## **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 the building is currently in use as a guest house and is available to rent as a holiday home on Booking.com. The building has been use as a guest house since before 1964 and no relevant planning permission exists, and is therefore exempted development. No enforcement warning letters have been issued for the current use as a guest house. The lands are not eligible for inclusion on the RZLT as a 'trade or profession is being carried out on the lands' and 'liable to commercial rates' and 'is providing day-to-day services to residents of adjacent residential areas' and 'is not unauthorised development'.

## **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 'Established Development' in the Seven Strategic Towns Local Area Plan 2018-2024 and is therefore considered to be in scope.
- The subject site adjoins the public road network. The entrance to the existing site is via the N56. There is public lighting present along the road, however

there are no footpaths. There is a hard shoulder on both sides of the N56. Conclusion is that infrastructure adjoins the subject site.

- The public sewer network adjoins the site immediately to the south. The network runs along the N56. An Irish Water mains adjoins the site immediately to the south. The network also runs along the N56.
- The site is clearly serving a residential property and its curtilage.
- The site does not enjoy the benefit of planning permission and therefore the default presumption for inclusion on the Map does not apply. Whilst the above assessment has clearly established that the site is serviced/has provision to be serviced, including public road access to the site via N56, and connecting to the public water mains and wastewater networks, the site is currently facilitating a private residential property and its curtilage.
- With regards to the guidelines and existing operations that provide a service to the existing or future residential community, the use of the residential property as a 6 bedroom holiday home does not provide a service to existing or future residential community.

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 building is currently in use as a guest house and has been since before 1964.
- The Council has taken an overly strict approach by only considering businesses that provide local services to be exempt.
- The subject site is a commercial premises operating as a guest house. The business is liable for rates payable to Donegal County Council. The trade or profession being carried out on site provides accommodation to residents of adjacent areas and further afield and has been doing so for many years. The

guest house is available to be booked by the existing or future residential community if they so wish.

- The development is considered authorised as per its pre-63 status.

## 7.0 Assessment

- 7.1. The grounds of appeal states that the property provides a service to the existing and future residential community as a guesthouse and that it is liable for commercial rates. Section 3.1.2 of the RZLT Guidelines confirm that with respect to existing operating uses:

### *“Operating Uses on Residential Zoned Lands*

*With reference to land that is included in a development plan or local area plan and is zoned solely or primarily for residential use such as ‘Residential’ or ‘New Residential’, existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future residential community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates. Local Authorities should seek input from their Rates Offices in this regard.... For clarity, existing uses such as shops, cafes and similar commercial uses which would be utilised by a residential community on a day-to-day basis and support the sustainable development of the community are considered to be exempted from scope.” (Page 11).*

- 7.2. The Council states that as the property is formed of a 6 bedroom holiday home, it does not provide a service to existing or future residential community.
- 7.3. In my view, it is clear that the primary functions of the guesthouse or holiday home on the site is to serve a wider catchment of people visiting the area, and not intended to serve the needs of the community of the area on a day-to-day basis. As such, the exemption under section 653B.(i) would not apply. In addition, no evidence of payment of commercial rates on the property is provided and the Council have not confirmed this either way. Guidance from Revenue indicates that while commercial rates are payable on Guesthouses, Holiday Homes are subject to Local Property Tax (LPT) (Page 7 ‘Exemption for residential properties fully subject to commercial rates Part 02-02’ Dec.22). In the event that Local Property Tax is paid on the property, the

site would remain in scope but would not be liable for payment of the RZLT, with evidence of payment of LPT to be provided to Revenue in this regard.

7.4. With respect to footpaths, whilst I note that the Council states that there is no footpath adjacent to the site, submitted materials including maps, evidence that there is a footpath along the section of the N56 where the site is located.

7.5. As a result, in my opinion, the site should be considered in-scope.

## 8.0 Recommendation

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

## 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 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 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.

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Rachel Gleave O'Connor  
Senior Planning Inspector

15 August 2023