



An
Bord
Pleanála

Inspector's Report ABP-316614-23.

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 Map

Location

Edenmore, Dunboyne, Co. Meath

Local Authority

Meath County Council

Local Authority Reg. Ref.

MH-C89-20

Appellant

Sean Boylan

Inspector

Emma Nevin

1.0 Site Description

1.1. The site is located in the urban townland of Castlefarm, located to the east of Dunboyne. The site is accessed via the L2228, with an entrance to the front of the site serving the existing residence. The area of the subject site is stated 2.08 ha. The site is currently used as agricultural land for growing crops and herbs and forms part of a larger landholding, also in the appellant's ownership.

2.0 Zoning

2.1. The site is zoned 'new residential' in the Meath County Development Plan 2021-2027 under objective A2, with a stated objective "*To provide for new residential communities with ancillary community facilities, neighbourhood facilities and employment uses as considered appropriate for the status of the centre in the Settlement Hierarchy*". As such, residential is use permitted on the subject lands.

3.0 Planning History

- 23220: Conditional permission granted by Meath County Council on 26th April 2023 for the retention and completion of existing building ancillary to the existing dwelling, consisting of gym area, free weights area, domestic storage, kitchenette, bathroom, boiler room and permission for change of use to habitable accommodation for family members and staff (when required) with internal alterations and alterations to all elevations and all associated site development works.
- DA60183: Conditional permission granted by Meath County Council on the 29th June 2006 for the extension and remodelling of the existing private residence with connection to the existing main services.
- 94/744: Conditional planning permission granted by Meath County Council on the 12th September 1994 for the completion and retention of the herbal complex.
- 93/670: Conditional planning permission granted by Meath County Council on the 1st September 1993 for the construction of buildings and ancillary works

for use as a herbal complex, including the retention of existing buildings already in such use and the removal of existing prefabricated buildings.

4.0 Submission to the Local Authority

- 4.1. The landowner made a submission to the Local Authority seeking to have its lands, removed from the draft map, the submission included the lands to the northern part of the site, as delineated in red on the map submitted with the submission.
- 4.2. The landowner states that the lands do not have the necessary access to the public road and as such the inclusion of the land as part of the Draft RZLT Map is inconsistent with the relevant provisions of the Finance Act, 2021. The submission outlines that to access nearby partly completed distributor road would require traversing third party lands.
- 4.3. The only other access would be via other lands owned by the subject landowner. The submission outlines that the current access road would not be sufficient to provide for the development of residential units on the subject lands and as such the public infrastructure is not sufficient. It is also outlined that the water and wastewater infrastructure would be delivered as part of the road.
- 4.4. In this regard, the required infrastructure was not in place on 1st January 2022, or since this date and as such the subject lands should not be included in the RZLT Draft Maps.

5.0 Determination by the Local Authority

- 5.1. The contents of the submission are noted, and it is understood that the landowner must cross third party lands to avail of access to the new distributor road, which is partially to the new distributor road which is partially constructed to the south of the L2228.
- 5.2. In this context it is considered the landowner would require third party consent to access the subject lands and access water and wastewater services, therefore, these lands should be deemed 'out-of-scope' and removed from the final RZLT Map.
- 5.3. The local authority determined that the subject site i.e. the northern portion of the site delineated in red on the map submitted as part of the submission to the local

authority, is deemed 'out-of-scope' for the purposes of the RZLT and should, therefore, be removed from the draft RZLT map.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant and his family are owner occupiers of the property as their principal residence and operate an Herbal Medical Clinic from the land, including the growing of crops/herbs for this purpose.
- The appellant refers to the decision of Meath County Council in respect of a submission on behalf of the appellant as part of the public consultation process, on the RZLT Draft Map.
- The determination of Meath County Council to remove part of the lands within the ownership of the appellant is supported, as indicated on the appeal to the local authority, from the scope of the RZLT, however, the adjoining lands also within the ownership of the appellant at this location have not been removed.
- The appellant states that the lands subject to this submission are currently in agriculture use for planting and growing of crops/herbs in conjunction with the Herbal Medical Clinic use.
- The extent of the ownership to which this appeal relates is shown. It is the basis of the appeal that the inclusion of the land on the draft map both the land which has been determined by Meath County Council to be 'out-of-scope' and other lands in the appellants ownership at this location does not meet the criteria which determine the land to be in scope. Specifically, the site does not meet the criteria under Section 653B(b) of the Finance Act 2021.
- The site does not benefit from existing access nor is access achievable without reliance on third parties. There is an existing internal road serving the single dwelling and Herbal Medical Clinic which currently provides agricultural access to the lands. This internal access is via a small residential access off the L2228. This existing access is immediately adjacent to a partially completed new distributor road to the east, only some circa 15 metres from

the residential access road. It is clearly the intention in the wider strategic planning and transportation terms that this distributor road will serve to open residentially zoned lands to the south, including the subject lands.

- The appellant has no ability to deliver this land as this is being pursued by another unrelated party. The existing extent of the distributor road stops well short of the appellants ownership and required a third party to develop it further.
- In terms of other services such as water supply and foul water drainage, typically these services would be provided to a significant new development site via the road access, and as the road access is not available, the ability of the site to be serviced in this respect is prohibited.

6.2. No additional report was received from Meath County Council following the appeal. The local authority noted that there was no further information request made to Irish Water, the NRA, or any prescribed body.

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. It is noted that subject site is zoned objective A2, with a stated objective *“To provide for new residential communities with ancillary community facilities, neighbourhood facilities and employment uses as considered appropriate for the status of the centre in the Settlement Hierarchy”*.

7.2. The fact that the lands are the primary residence of the appellant and are in agriculture use for planting and growing of crops/herbs in conjunction with the Herbal Medical Clinic use does not qualify for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.

7.3. I wish to draw the Boards attention to the following:

- (i) The Parcel ID: MHLA00120284 includes an overall site area of 2.09 ha. and highlights the full area of land subject to the Draft RZLT Map.
- (ii) The submission, by the landowner, to the local authority included only the northern part of the landholding, delineated in red on the map accompanying

the submission to the local authority. The submission outlined that the portion of the land, as delineated, should be removed from the Draft RZLT Map, as the lands do not have the necessary access to the public road and would require traversing third party access to avail of services necessary for the development of residential units.

- (iii) The determination from Meath County Council concluded that the lands highlighted in the submission to the local authority, i.e. the northern portion of the site only, were deemed 'out-of-scope' for the purpose of the RZLT, and recommended that they be removed from the Draft RZLT Map, as the landowner must cross third party lands to avail of access to the new distributor road, which is partially constructed to the south of the L2228.
- (iv) The subsequent appeal now relates to the entire land parcel (Parcel ID: MHLA00120284), delineated in red on the map, accompanying the appeal documentation. However, the southern part of these lands did not form part of the landowner's submission to the local authority, nor form part of the determination of the local authority.

7.4. The appellant states that while the determination of the local authority is supported, the adjoining lands as indicated in the appeal, also in the ownership of the appellant have not been removed from the map.

7.5. I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, June 2022 which states that;

"Appeals may be made to An Bord Pleanála against a decision by the local authority to include land on the maps for the purpose of the tax measure, where a landowner has unsuccessfully challenged such a decision".

Section 3.3.1 Consideration of Appeals, also states that; *"Separate to the re-zoning provision referred to above, there is an opportunity for landowners to appeal the inclusion of their lands on the draft and supplemental map to An Bord Pleanála, where they have been unsuccessful with a submission to the Local Authority".*

Section 3.3.2 Restriction to Considering Criteria for Inclusion, further 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 the public display period, and any additional information on the servicing or use of the land*

which the Board may seek from the landowner, the local authority or stakeholders identified in article 28 of the 2001 Regulations. In assessing any appeal, the Board is restricted to considering whether the land meets the qualifying criteria set out in section 653B only”.

Section 5 is also relevant which states “*Where a submission has been made to a local authority by a landowner regarding inclusion of land on the draft map, and a notification of a determination by a local authority has been received, an appeal may be made to An Bord Pleanála of that determination”...“An Bord Pleanála will consider the appeal based on the grounds of appeal provided to them, along with the determination and reasons provided by the local authority”.*

- 7.6. As per the Guidelines, An Bord Pleanála is restricted to considering the appeal on the determination of the local authority decision. In this regard, I will consider the portion of the lands pertaining to the determination of the local authority decision, i.e. the northern portion of the lands, only, as delineated in red on the map accompanying the submission to the local authority.
- 7.7. The appellant states that the site does not benefit from an existing access, and that the development of this site is heavily reliant on cross third-party lands to link into the adjoining partially constructed distributor road. While there is an existing internal roadway serving the lands to the rear of the site, which has an existing vehicular entrance onto the L2228, this is to provide agricultural access to the site.
- 7.8. It is further stated in the appeal, that in the wider strategic planning and transportation terms that this distributor road will serve to open residentially zoned lands to the south, including the subject lands.
- 7.9. The local authority in their determination highlights that the landowner must cross third party lands to avail of access to the new distributor road, which is partially constructed to the south of the L2228, and in this context the landowner would require third party consent to provide vehicular access these lands and access water and wastewater services. The local authority deemed that the lands are ‘out-of-scope’.
- 7.10. I refer to Section 4.1.1 Considerations (iii) Services to be considered of the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, which states; “*If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or*

planning permission in themselves, then the land should be considered to be out of scope”.

- 7.11. Having regard to the local authority assessment, which stated, as a matter of fact, that the landowner would have to traverse third party lands to connect to services, it is reasonable to consider that the site cannot provide “*roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed*”, as required under Section 653B(b), of the Taxes Consolidation Act 1997, as amended.
- 7.12. As highlighted above, while the appeal relates to the entire land parcel (Parcel ID: MHLA00120284), the Board is restricted in its assessment to the determination of the local authority, which relates to the northern portion of the site, as delineated in red on map accompanying the submission to the local authority.
- 7.13. As such, the lands are not considered to be serviced for residential dwellings as per as per Section 653B(b) of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority and remove the lands identified as MH-C89-20 (delineated in red on the map accompanying the landowner submission to the local authority) from the RZLT map.

9.0 Reasons and Considerations

- 9.1. The landowner would have to traverse third party lands to connect to services on the adjoining site. Therefore, it is reasonable to consider that site cannot provide “*roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed*”, as required under Section 653B(b), of the Taxes Consolidation Act 1997, as amended.
- 9.2. 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 the Guidelines for Planning Authorities on the Residential Zoned Land Tax, the site is considered out of scope for the purposes of the RZLT and the lands identified as MH-C89-20 (delineated in red on the map

accompanying the landowner submission to the local authority) should be removed from the map.

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.

Emma Nevin
Planning Inspector

19th September 2023