



An
Bord
Pleanála

Inspector's Report

ABP-316621-23

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
Location	Blackberry Lane, Cartronroy, Lissywollen, Athlone, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	WM-C49-RZLT-11
Appellant(s)	Avenir Homes Limited
Inspector	Rachel Gleave O'Connor

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1.0 Site Location and Description

1.1. The subject site is located south of the N6, west of the R916, north of the Old Rail Trail Greenway, and east of agricultural fields. The site is formed of a greenfield area.

2.0 Zoning and other provisions

2.1. The site it is included in the Lissywollen South Framework Plan 2018-2024 as Area 4 – Residential with a small part towards the south east of the site zoned Area 5 – Mixed Use. The site is not zoned in the current Westmeath County Development Plan 2021-2027. The site was formerly zoned residential in the Athlone Town Development Plan 2014-2020, however with the adoption of the Westmeath County Development Plan 2021 which includes the administrative area of Athlone, the zoning under the former Town Development Plan is no longer applicable.

2.2. Section 10(8) of the Planning and Development Act 2000 states that ‘There shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain zoned in any subsequent development plan’.

2.3. There is no current Local Area Plan applicable to the location of the appeal site. As such, the subject site is currently unzoned.

3.0 Planning History

3.1. ABP – 312581-22 – SHD Planning Permission Granted on 20th June 2022 for 122 no. residential (60no. houses, 62no. apartments) and 283 no. student bedspaces, creche and all associated site works.

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 development of the entire lands in ownership is contingent on the delivery of a new east-west distributor road (Lissywollen Avenue), which has planning permission as well as secured

funding under the Local Infrastructure Housing Activation Fund (LIHAF). While planning permission secured for SHD development ref.312581-22, since the grant of this permission, the preferred 'Economic Operator' to deliver the road component has gone into liquidation meaning significant uncertainty now exist in relation to its delivery. A new competitive tender process is required to select a new Economic Operator to deliver the road and has not yet commenced.

- 4.2. The Council and the developer wish to see the development of housing and student accommodation on the subject lands as soon as possible, but due to the requirement for the distributor road to be completed to facilitate access, the lands should be omitted from the RZLT Map until such time as they are developable.
- 4.3. Pending completion of the distributor road, it is not reasonable to consider that the subject lands have access or capacity to cater for the permitted development. In accordance with section 653B of the Taxes Consolidation Act 1997 the subject lands should be discounted from the RZLT Map.

5.0 Determination by the Local Authority

- 5.1. The RZLT Guidelines informs that the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority. Such is the case with the subject lands where the construction of the distributor road, funded under the Local Infrastructure Activation Fund (LIHAF).
- 5.2. Notwithstanding the existing planning permission associated with the subject lands and any issues that might exist with regard to the implementation of this permitted development, it should be noted that the lands in question can also be accessed by way of a public roadway situated from an existing roundabout located on the R916 at Garrycastle. It is therefore considered that the subject lands meet the criteria set out in section 653B of the Finance Act 2021.
- 5.3. 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

- Development of the lands are contingent on delivery of the Lissywollen Avenue road which has planning permission as well as secured funding under the LIHAF.
- Planning permission ABP-312581 has been granted over the majority of the lands, a feasibility study has been prepared for the remainder of the lands, but proposals have not been formalise due to uncertainty related to delivery of Lissywollen Avenue.
- Since the grant of planning permission the preferred 'Economic Operator' to deliver the road has gone into liquidation. It is understood that a new 'Economic Operator' would have to be appointed through another formal tendering process, which had not yet commence at the time of the RZLT submission.
- The cut-off dates for considering lands to be in-scope for the draft and supplemental maps is one month prior to publication, i.e. 1 October 2022 and 1 April 2023. At this point in time, the subject lands are not serviceable due to the absence of the new east west distributor road. As such, they are not within the scope of the Guidelines.
- The developer made an offer to the Council to construct the first section of the road to the entrances of the permitted SHD development, subject to cost reimbursement on the basis that said infrastructure will serve a larger strategic landbank. They were advised that this approach was not possible owing to arrangements related to the secured government funding for Lissywollen Avenue.
- Note the general statement in the Council's Submission Assessment Report that notwithstanding the acknowledged issues related to the delivery of the distributor road, 'the lands in question can be accessed by way of a public roadway situated from an existing roundabout located on the R916 at Garrycastle.' In practice, this road terminates c.120m to the permitted vehicular entrance to the residential component of the subject site, accessible

via Council owned lands. As it stands, the developer does not have consent or planning permission to deliver the required road infrastructure to service their development land.

- The Guidelines state that ‘where provision has been made, but not yet constructed for road and pathway access through Local Authority consenting processes, then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.’ We are not aware of the existence of any formal tendering process for the construction of the subject infrastructure at the cut-off date for land to be zoned and serviceable for inclusion on the draft RZLT map. As such, the lands are not in scope for RZLT as per Section 4.1.1(iii) of the RZLT guidelines.

7.0 Assessment

- 7.1. Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) ‘is included in a development plan’ or ‘local area plan’ zoned solely or primarily for residential use, or for a mixture of uses including residential.
- 7.2. The subject site is not zoned for residential use under either the Westmeath Council Development Plan 2021-2027 or under a Local Area Plan. As such the site is not zoned and therefore should be removed from the RZLT map.
- 7.3. I address the other matters raised in the Grounds of Appeal below, however, as set out above the subject site is not zoned for residential use and therefore cannot be considered in scope for the RZLT for that reason.
- 7.4. With respect to an existing SHD planning permission on the site which is conditioned upon confirmation of details of a new access road known as Lissywollen Avenue. The Local Authority and the appellant confirm that this road is permitted and has funding secured through the LIHAF. The appellant states that while tendering for this road previously secured an ‘Economic Operator’ they have gone into liquidation and a new tendering process is required which has not yet commenced. The Local

Authority does not provide confirmation with respect to the tendering process for the road.

- 7.5. The Residential Zoned Land Tax Guidelines state on page 24 with respect to road access that:

*“In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. **Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority.** Where provision has been made, but not yet constructed for road and pathway access through Local Authority consenting processes, **then lands can be considered in-scope, where the process of tendering for construction of the permitted road or pathways has commenced.**”* (My emphasis).

- 7.6. As confirmation for the tendering for the delivery of this new significant piece of road infrastructure has not been confirmed by the Local Planning Authority, it cannot be relied upon, with reference to the Guidelines provisions relating to road access as set out above.

- 7.7. The Local Authority states that notwithstanding the delivery of ‘Lissywollen Avenue’ the site can be accessed by way of a public roadway situated from an existing roundabout located on the R916 at Garrycastle. This is the same route that is planned for the Lissywollen Avenue link. The appellant states that this road ends c.120m away from the site entrance. This road is confirmed by the Local Authority to be formed of public lands. The site has frontage areas immediately adjacent to some sections of this ‘road’. Access is not currently provided to the site from this ‘road’ as is not finished to public road standards and this might explain the appellant assertion that the road ends c.120m away from the site entrance. As such, the road would require upgrades to serve development of the site. These upgrades could be in a form that differed from the Lissywollen Avenue that is currently planned and/or consist of only partial delivery of the avenue in so far as it would serve the development site. Such works are within the normal parameters of what a development proposition can be expected to include in order to facilitate

development of a site. The Residential Zoned Land Tax Guidelines state on page 23 that:

“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.”

- 7.8. The existing road infrastructure, while requiring upgrades, is within the landholding and control of the Local Authority and adjoining the landbank. As such, the subject site would not be considered outside of the scope of the RZLT for this reason alone. Notwithstanding, and as described at the start of my assessment, the site is not currently zoned under a Development Plan or Local Area Plan, and therefore is not in-scope for the RZLT.

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, the site is not zoned under a current Development Plan or Local Area Plan for the area, 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

25 May 2023