



An
Bord
Pleanála

Inspector's Report ABP-316651-23

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

Bilberry Hill, Claremorris, Co. Mayo

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

RZL011

Appellant(s)

Thomas Clarke

Inspector

Rachel Gleave O'Connor

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1.0 Site Location and Description

- 1.1. The Council Assessment relates to lands identified by parcel ID MOLA00002136 and MOLA00002131 & MOLA00002133 in the Residential Zoned Land Tax map.
- 1.2. Parcel ID MOLA00002136 is formed of agricultural fields, bound by farming buildings to the north west and agricultural fields to the south and west in the same landownership, with residential estates to the east and north. The lands are known as Bilberry Hill and have no associated folio numbers, being unregistered title.
- 1.3. Parcel ID MOLA00002131 & MOLA00002133 is situated to the north of Lisnaboley Lane and west of the N60. It is formed of agricultural fields. It is bound by agricultural fields to the north and residential dwellings to the south east.

2.0 Zoning and other provisions

- 2.1. RZLT land parcel ID MOLA00002136 is zoned Strategic Residential Reserve Tier 1 in the Claremorris Settlement Land Use Zoning Map under the Mayo County Development Plan 2022-2028. The Land Use Zoning Objectives table on from page 223 of the plan states that in Tier II Towns and Villages such as Claremorris, the land use zoning objective for Strategic Residential Reserve Tier 1 is as follows:

To protect and safeguard suitable, undeveloped lands for future multiple residential developments. These lands are generally not developable during the lifetime of this plan for multiple residential developments. However, this position will be reviewed by the Planning Authority periodically over the lifetime of the plan to ensure housing growth targets are achieved (Refer to Core Strategy Table). Where it is apparent that 'New Residential' lands cannot or will not be developed within the plan period, residential development may be considered within Strategic Residential Reserve Tier I. Single houses shall only be considered on a limited basis, where it has been established that the lands in question do not adversely impact on the intended future use of these lands; form part of the overall family landholding and no other appropriately zoned lands are available within the plan boundary; and a demonstrable economic or social need has been established (Refer to Objective RHO 1).

- 2.2. Parcel ID MOLA00002131 & MOLA00002133 is zoned New Residential in the Claremorris Settlement Land Use Zoning Map under the Mayo County Development Plan 2022-2028. The Land Use Zoning Objectives table on from page 223 of the plan states that New Residential lands are to provide for new residential development.

3.0 Planning History

- 3.1. Planning History relates to Parcel ID MOLA00002131 & MOLA00002133 situated to the north of Lisnaboley Lane:
- 3.2. PA Reg. Ref. 07/2543 / ABP Reg. Ref. 16.226831 – On 12th May 2008 Permission REFUSED on first party appeal to An Board Pleanála for construction of a mixed use development comprising 201no. houses, creche, community facility, retail unit and associated site works. Permission refused for one reason relating to hazardous access arrangements, with reference to a junction between a narrow public road with restricted sightlines.

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 comprised a letter from a Councillor representative of the landowner and solicitor letter with respect to ownership. The letter states that the land is actively used for agriculture. The solicitor letter confirms there are no associated folio numbers with the land which are unregistered title.

5.0 Determination by the Local Authority

- 5.1. Actively farmed land can only be a consideration for exclusion from RZLT on lands zoned 'Mixed Use', where farming is the primary use of the land, a place of employment. The lands meet all criteria. Surface water gullies appears to be available along the Main N60 and along Lisnaboley Lane. Planning history on this site (pl.07/2543) confirms the presence of surface water sewer at entrance to these lands. On the basis of the request made, seeking exemption of Tax Liability on basis

of farming actively, these lands remain in scope as it is Residential Zoned land that meets the RZLT scoping criteria.

- 5.2. The indicated plot of land on the northern side of Lisnaboly Lane is zoned New Residential and meets the scoping criteria as per 653B of the Finance Act 2021. The other indicated lands are zoned Strategic Residential Reserve Tier 1 in the Claremorris Plan which meet all criteria. Actively farmed land is only considered for exclusion from RZLT on lands which hold a 'Mixed Use' zoning, where it is demonstrated that active farming is the primary use of the land and considered a place of work. Exemption from Tax Liability on the basis of farming activity being carried out on Residentially zoned lands is not a provision in the Finance Act 2021 for the purpose of the draft RZLT map.
- 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

- Appeal the decision by Mayo County Council to have the lands zoned as Strategic Residential Reserve. The lands in question surround the landowners dwelling house and run right up to the farm buildings. This parcel of land, due to it being adjacent to the farm buildings, is of strategic importance to ensuring the viability of the farming enterprise. Without this land, the landowner will not be able to continue farming as a viable enterprise. Should the lands be zoned Strategic Residential Reserve, the income from the farming enterprise will be unable to sustain the land tax, necessitating that the land be sold and the landowner give up commercial farming.
- The lands are susceptible to flooding.
- Accessibility levels to the lands from the public road are cost prohibitive in having a development constructed in compliance with the department of the environment and local authority recommendations for site development works for housing.

- There is no surface water drainage available to the proposed area to be zoned to facilitate a storm water run off from any housing development scheme, even when attenuation is considered.

7.0 Assessment

- 7.1. Active and established agricultural use does not qualify for omitting the lands from the map under section 653B, nor does the question of viability as a consequence of the application of the RZLT to the lands. The lands are not situated in an area identified as being at risk of flooding.
- 7.2. 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. RZLT land parcel ID MOLA00002136 is zoned Strategic Residential Reserve Tier 1 under the Mayo County Development Plan 2022-2028. The Land Use Zoning Objective for Strategic Residential Reserve Tier 1 states:

*To protect and safeguard suitable, undeveloped lands for future multiple residential developments. **These lands are generally not developable during the lifetime of this plan for multiple residential developments.** However, **this position will be reviewed by the Planning Authority periodically over the lifetime of the plan** to ensure housing growth targets are achieved (Refer to Core Strategy Table). Where it is apparent that 'New Residential' lands cannot or will not be developed within the plan period, residential development may be considered within Strategic Residential Reserve Tier I. Single houses shall only be considered on a limited basis, where it has been established that the lands in question do not adversely impact on the intended future use of these lands; form part of the overall family landholding and no other appropriately zoned lands are available within the plan boundary; and a demonstrable economic or social need has been established (Refer to Objective RHO 1). (Emphasis added).*

- 7.3. The lands zoned Strategic Residential Reserve Tier 1 are specifically identified in the Development Plan as not 'generally' being developable during the lifetime of the plan, however this is subject to review by the Planning Authority. As such, in my view these lands are not zoned for residential development for the purposes of the RZLT, as development of the lands for residential use will ordinarily be prohibited during the

lifetime of the plan, with an exemption to this prohibition being subject to the review of the Planning Authority, and as such outside of the control of the landowner. This implies that a variation of the plan would be required to bring forward this site for residential development in the lifetime of the plan.

- 7.4. Therefore, the lands identified by RZLT land parcel ID MOLA00002136 are not in-scope for inclusion in the RZLT maps.
- 7.5. With respect to lands north of Lisnaboley Lane identified by RZLT Parcel ID MOLA00002131 & MOLA00002133, and zoned New Residential in the Mayo County Development Plan 2022-2028, this land is zoned primarily for residential development. However, planning history on the site indicates historical complications with the delivery of residential development on the site in terms of safe access arrangements. The appeal grounds raise the matter of accessibility levels being cost prohibitive in terms of achieving requirements for site development works.
- 7.6. There are footpaths to one side of Lisnaboley Lane which connect to the pedestrian infrastructure network for the town. The site is adjacent to this footpath and could readily connect into this as part of development works. I note concern highlighted in the historical planning decision on the site concerning the inclusion of a junction between a narrow public road and internal access road at a point where sightlines are restricted by a nearby crest in the road (railway bridge), and where 80kph speed limit applies. This would relate to the proposed access from Lisnaboley Lane. The site also extends to the N60, which is wider and has pedestrian infrastructure. In my view, the access issue does not appear to be insurmountable, particularly as the site benefits from frontage onto both Lisnaboley Lane and the N60, albeit the access from the N60 to the east is limited in extent. There is however an existing access to the site from the N60 to the eastern end of the land parcel. It would be expected as part of any development proposition on the subject site that this include footpaths within the site extent, and connection to public lighting, water/wastewater, drainage etc can be facilitated via public roadway, and such connection works would form part of a normal development proposition for any site.
- 7.7. With reference to the preceding paragraph, I am satisfied that lands north of Lisnaboley Lane identified by RZLT Parcel ID MOLA00002131 & MOLA00002133,

and zoned New Residential in the Mayo County Development Plan 2022-2028, are in-scope for the RZLT.

8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority in part, by directing that RZLT land parcel ID MOLA00002136 zoned Strategic Residential Reserve Tier 1 under the Mayo County Development Plan 2022-2028, be omitted from the Residential Zoned Land Tax Map, and that lands north of Lisnaboley Lane identified by RZLT Parcel ID MOLA00002131 & MOLA00002133 zoned New Residential in the Mayo County Development Plan 2022-2028, be included 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 partially in scope for the purposes of the RZLT map. RZLT land parcel ID MOLA00002136 is zoned Strategic Residential Reserve Tier 1 under the Mayo County Development Plan 2022-2028 and is not currently available for residential development within the lifetime of the Mayo County Development Plan 2022-2028, and as such, should be removed from the RZLT map, with the remainder of the site identified by RZLT Parcel ID MOLA00002131 & MOLA00002133 and zoned New Residential in the Mayo County Development Plan 2022-2028 remaining in scope.

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

30th June 2023