



An
Bord
Pleanála

Inspector's Report

ABP-316660-23

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	Nally Street, Ballina, Co. Mayo.
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	RZL016
Appellant(s)	Mary Loftus
Inspector	Rachel Gleave O'Connor

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1.0 Site Location and Description

- 1.1. The site is located to the north west of Castle Road and south of the rear of properties that front Belleek Lodge. The site itself relates to a property known as Moymount and its curtilage. Site extent exceeds 5,000sqm (approx.).

2.0 Zoning and other provisions

- 2.1. The Mayo County Development Plan 2022-2028 includes Objective SSO 13 that:

The land use zoning provisions of the existing town and environs development plans for Ballina, Castlebar and Westport shall continue to be implemented on an interim basis until such time as local area plans are adopted for these towns, whilst also having regard to any draft local area plan, and subject to compliance with the provisions of the Mayo County Development Plan, including the Core Strategy population/housing targets.

- 2.2. The subject site is zoned Phase 2 Residential (Map no.6) under the Ballina and Environs Development Plan 2009-2015.

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 dwelling house is c.100 years old and many of the trees pre-date the house. The site area exceeds an acre. Local property tax is paid on the dwelling.

5.0 Determination by the Local Authority

- 5.1. The house and garden aspect of the submission are located on Residential zoned land. Existing residential properties located on Residential Zone lands i.e. estates or individual houses are considered in-scope (though not liable for tax) see Section 653O(1)(a) but are required to be included for mapping purposes. It should be noted

that residential properties and associated curtilage (of which exceeds 0.4047ha) are not liable for tax (see section 653O(2) of the Act), owners of such properties must register for the RZLT and provide certain information to the Revenue Commissioners. Actively farmed land, as a primary use of land, can only be a consideration for exclusion from the RZLT requirements on lands carrying a 'mixed-use' zoning provision. The subject land carries a Residential zoning provision. Therefore, as the subject lands meet the scoping criteria as per section 653B of the Finance Act 2021 it is considered the lands are in-scope for inclusion on the draft RZLT map.

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

- Understand that if the property appears on the final RZLT maps, that it must be registered because the house and grounds are over an acre. However, there is no requirement or obligation under the legislation (which just states 'may') for the house and gardens to be included on the final map. Therefore request that the house and gardens not be included on the final map. No RZLT is payable as the house with adjoining garden is entirely residential and not development land, and LPT is already being paid.
- The property has been used for agricultural purposes by a third party with consent by the owners of the land for well over sixty years and it is not currently vacant or idle but instead integral for the use being carried out on the lands. The current agricultural use is temporary but likely to continue for some further time and this is one of the permitted exclusions from the tax under the legislation as the lands are occupied by a particular use which benefits from an exclusion.
- The lands have a current existing operating use which is not unauthorised and it is permitted to exclude the lands from the tax for this reason.

- It is also within Council discretion to consider the exclusion of lands from the tax even where such use is non-conforming.
- It would require significant works and infrastructure by the local authority to prepare these lands for development. To assist the Council, a wayleave has been granted to Ballina Main Drainage over the lands for drainage works and the laying of pipes but these works were not done and significant works need to be done to get the land ready for development.
- The legislation is intended to cover areas like Dublin and other large urban areas where there is a major housing shortage and developers are holding on to land banks. There is no housing shortage in Ballina, county Mayo and these lands are not needed for development.
- Development or sale of the land with RZLT attached will not be viable.
- Application of the tax would make any housing developed more expensive.
- Unreasonable and against property rights.

7.0 Assessment

- 7.1. The site is situated in the curtilage of a residential property. The residential property is liable for local property tax. The appellant confirms that the site extends to 0.4047 hectares. The RZLT Guidance states on page 6 that:

*Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however owners of residential properties within these areas will not be liable for the tax (See section 6530(1)(a) of the legislation). While **residential properties, the associated curtilage of which exceeds 0.4047 ha are also not liable for the tax** (see section 6530(2) of the legislation), **owners of such properties must register for the RZLT and provide certain information to the Revenue Commissioners.** This does not require any action on the part of the Planning Authority. (emphasis added).*

- 7.2. As the appeal site forms part of the curtilage of a residential property, it is not considered a 'site' for the purposes of the RZLT, however this does not mean that the lands are removed from the map and no action is required of the Planning

Authority. The landowner (appellant) must register for the RZLT and provide information to the Revenue Commission, to demonstrate that the tax will not be payable.

- 7.3. 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.
- 7.4. The lands are attached to an existing residential property which is connected to existing infrastructure. Footpaths exist on Castle Road. It would be anticipated a part of any normal development proposition for a site that it include connections to necessary infrastructure.

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 should remain on the RZLT map. The site exceeds 0.4047ha and forms the curtilage to a property (Moymount). The landowner (appellant) must register for the RZLT and provide information to the Revenue Commission, to demonstrate that the tax will not be payable under section 653O(2) of the Taxation Consolidation Act 1997, as amended by the Finance Act 2021.

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