



An  
Bord  
Pleanála

## Inspector's Report ABP-316677-23

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### 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

Bohernasup, Ballina, Co. Mayo.

### Planning Authority

Mayo County Council

### Planning Authority Reg. Ref.

RZL038

### Appellant(s)

John Judge

### Inspector

Rachel Gleave O'Connor

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## **1.0 Site Location and Description**

- 1.1. The site is located to the rear of properties fronting Bohernasup to the west, and to the south of properties on Lansyn to the north. The site is currently formed of greenfield area.

## **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 under the Ballina development plan the land is zoned phase 2 residential, and I will not be able to get planning permission, so it cannot be developed. Therefore request that the land be excluded from the residential zoned land tax.

## **5.0 Determination by the Local Authority**

- 5.1. Phase II Residential Lands consist of residentially zoned serviced lands closest to the town centre and centres of population. Based on this zoning category and details set out in the plan, new multiunit residential development can be considered on

Phase 2 lands based on a justification test as per the criteria set out in section 2.1.2 of said plan. Such provisions do not preclude such lands from development during the lifetime of the Plan. Phased Residential zoning is not to be confused with Strategic Residential reserve Tier II zoning classification where such lands are not developable within the lifetime of the Plan (see GZT Classifications). Such zoning should therefore not be confused with Phased zoning objectives as is the case of the subject site/lands. Where, in the scoping of lands for the purposes of the RZLT the site/land meets the six criteria as set out in the Finance Act 2021, such lands falls into scope as there is no specific exclusion set out in the legislation that would remove lands subject to a phasing schedule in the Local Area Plan/Strategic Development Zone etc.

- 5.2. Lansyn Road is taken in charge. The Lansyn Estate appears to have surface water gullies. Lighting available along Lansyn Residential estate and also within Belleek Lodge Residential area. Site can be serviced with respect to water, road, surface water sewer, wastewater, footpaths.
- 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**

- The landholding in question is not zoned residential use in terms of the spirit or intent of the legislation i.e. it is an encumbered and land reservation rather than land activation or enabling zoning; and,
- The landholding in question is subject to a statutory designation that may preclude development.
- There are a series of independent tests to be passed before consideration can be given to Phase 2 lands. The cumulative effects of these tests are significant and detrimental to the prospects of securing planning permission on the subject site. It is also notable that Phase 2 lands were excluded from the Vacant Site Levy initiative, the criteria for which included 'the site is suitable for the provision of housing'.

- It is apparent that 70% of phase 1 lands have not been fully developed and are not fully committed to development and it is not considered possible to prove that all uncommitted Phase 1 lands are unavailable for development or unserviceable. As such the burden of proof upon an applicant renders overcoming these requirements as a virtual impossibility, and a de facto impossibility having regard to the realities of the planning system and having regard to the Interpretation Act, 2005 for instance.
- Phase 1 lands extend to a scale of 729 residential units, where the substantial majority of those lands remain undeveloped to date, some fourteen years since the adoption of the Plan in 2009. Going forward, the existing County Development Plan identifies a need for 511 units up to 2028 across c.30ha compared to a total of 148ha across both Phase 1 and 2 in the current plan.
- The previous 2014-2020 County Development Plan set a target of 7,222 for the period 2011-2020 and 593 units in Ballina, compared to commencement of 2,704 dwellings in the County over the same period.
- Ballina's allocation of the county targets (of 24%) of those commencements would account for only 646 dwellings, however the actual rate of construction in Ballina is significantly less, anecdotally less than 100 dwellings in the past decade or so.
- Note examples of implications of the zoning across Co. Mayo, with reference to An Bord Pleanála decision ABP-300295-17 where the Board refused permission as the lands were located in zoned residential phase 2 in the Louisburgh Local Area Plan, incorporated into the Development Plan 2014-2020, where Objective O-07 of the Plan provides that new residential development shall only be considered on Phase 2 lands where 70% of Phase 1 lands have been fully developed or overriding justification established, as the Board was not satisfied that either case had been demonstrated, it was considered that the proposed development would materially contravene that objective under the LAP. Also note a current scheme in Claremorris (Ref.P22/1049) zoned Strategic Residential Reserve, where the council advised that such lands are not open for multi-unit residential development.

- The council's decision for the inclusion of this site in the RZLT has an over emphasis on the issue of servicing of the site, and insufficient emphasis on the other criteria of the legislation, for instance Section 653B(c)(iv) of the Taxes Consolidation Act 1997, which refers to land that is subject to a statutory designation that may preclude development. The issue of 'may' vs. 'will' preclude development is particularly salient also.
- A phasing/order of priority restriction, which is a demonstrable barrier to planning permission (and a trigger for Material Contravention) as illustrated above, clearly constitutes a Statutory Designation.
- The Planning Authority interpretation of the Phase 2 designation is such that it is possible to navigate the designation to secure planning permission. The relevant test is actually whether the Phase 2 designation may (in and of itself) preclude the securing of planning permission, and not that the designation would (in and of itself) preclude the securing of planning permission.

## 7.0 Assessment

- 7.1. The zoning of the site as Phase II Residential Lands, is incorporated into the Mayo County Development Plan 2022-2028 in Objective SSO 13, via The Ballina & Environs Development Plan 2009-2015, which states the following requirement with respect to Phase II lands:

*Phase II Residential Lands shall comprise of currently residentially zoned serviced lands closest to the town centre and centres of population The Council will consider new multiunit residential development on Phase 2 lands only where a justification test is submitted showing that one Or more of the following circumstances apply:*

*(1) 70% of phase 1 lands have been fully developed, or;*

*(2) 70% of Phase1 lands have been fully committed to development (i.e. where planning permission has been granted and where construction is underway), or,*

*(3) In the case where all phase 1 lands have not been committed, it shall be proven that those uncommitted lands are unavailable for development or unserviceable.*

*AND where the justification test demonstrates the following;*

*(4) The Phase 2 lands are readily serviceable and*

*(5) There is a proven demand for new development based on a demonstrated lack of availability of housing and/or*

*(6) There is an overriding justification for development on phase 2 lands based on changed circumstances that may require the release of additional lands to cater for increased population numbers.*

- 7.2. I note the appellants reference to a Board decision ABP Ref.300295-17. This was with respect to provisions under the former development plan for the County and while not applicable to the subject site, contain similar requirements with respect to development of multi-unit housing on the lands (Phase II Residential Lands). In that case, the Board determined that a material contravention arose and refused the appeal, upholding the Council's decision to refuse planning permission. However, I note that the Inspectors assessment for that case stipulates that material contravention provisions under section 37(2)(b)(iii) and (iv) of the Act apply and the Board were entitled to grant permission should they so wish, however, the assessment also concluded that:

*"There is no evidence that 70% of Phase 1 lands have been developed. Whilst I note the detailed argument put forward by the applicant concerning changed circumstances (market choice, likelihood that Phase 1 permissions will expire without development, headroom above core strategy figures, and amenity benefits to existing estate from completion of the development) I am not satisfied that the applicant has demonstrated that the circumstances have changed since the adoption of the Development Plan."*

- 7.3. I also note that in that case, objective O-02 required the establishment of evidence based demand for the development in accordance with the Core Strategy and Settlement Strategy of the plan, which is a different requirement to that set out in the zoning under the Ballina & Environs Development Plan 2009-2015 copied above. What this referenced case illustrates to me, is that the application did not fail on the basis of the statutory designation, but on the basis of the appellant failing to demonstrate justification in line with the objective requirements. This is illustrated in the wording of the refusal, which states that the Board was not satisfied that a case had been demonstrated. In relation to the current scheme in Claremorris

(Ref.P22/1049) referenced by the appellant, this is zoned Strategic Residential Reserve, and therefore does not relate to the zoning applicable to the appeal site.

- 7.4. I am satisfied that the subject site is considered in-scope for inclusion on the RZLT maps, as there is criteria based provisions under the residential zoning, that enable development under the lifetime of the plan. I do not agree with the appellant that a statutory designation persists on the site that may preclude development.
- 7.5. The site can be serviced, and in this regard I note that the site is accessible via Lansyn road, which would also facilitate connections to a range of necessary infrastructure.
- 7.6. As a result of the foregoing, I am satisfied that the site is in-scope for the RZLT.

## **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  
Planning Inspector



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30<sup>th</sup> June 2023