



An
Bord
Pleanála

Inspector's Report

ABP-316735-23

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

Bachelor's Walk, Coolcholly Td.,
Ballyshannon, Co. Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

DNCC-C3-DCC-130

Appellant

Stephen Ward

Inspector

Brendan Wyse

1.0 Site Location and Description

- 1.1. The site is located on the northern side of Bachelor's walk about 500 metres north of Ballyshannon town centre. The area is essentially residential in character with agricultural lands extending northwards beyond and to the rear of the properties fronting Bachelor's Walk. The site has a stated area of 0.061has and comprises part of an undeveloped plot located between two residential properties. It has road frontage to Bachelor's Walk and extends to the rear boundary with the adjacent agricultural lands. The site falls within Parcel ID DLLA00001631 on the Residential Zoned Land Tax (RZLT) map.

2.0 Zoning and Other Provisions

- 2.1. The site is zoned 'Established Development' in the Seven Strategic Towns Local Area Plan (LAP) [Ballyshannon] 2018-2024.
- 2.2. The associated objective for this zone is:

To conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement.

3.0 Planning History

- 3.1. **PA Ref 19/51419** – November 2019 permission for 2no. houses, one on the subject site and one on the adjacent plot.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the local authority seeking to have the site removed from the draft map. The submission included:
- By reference to the zoning criteria for inclusion on the map the site is not zoned solely or primarily for residential use and the zoning objective makes no reference to uses of any kind.

- While the zoning objective refers to allowing development appropriate to the sustainable growth of the settlement it cannot simply be inferred that this constitutes the inclusion of residential use.
- The zoning objective is not for any particular use.
- While residential use can be allowed within the zone this does not equate to a zoning for residential use.
- The Residential Zoned Land Tax - Guidelines for Planning Authorities, at section 3.1.1, outline that mixed use zonings should only be included where residential developments are permitted in principle in accordance with a zoning matrix. There is no such zoning matrix.
- In the absence of a zoning matrix other provisions of the LAP support the contention that residential use in this case would, by analogy, be considered as 'open for consideration' rather than 'permitted in principle' within the 'Established Development' zone. The relevant provisions are:
 - Policy GEN-H-1 refers to positive residential zonings (or a 'Mixed Use' or 'Opportunity Site' zoning that includes an element of residential). It does not mention the 'Established Development' zoning.
 - Policy GEN-H-2 distinguishes between residential development on land zoned 'primarily residential' and 'opportunity sites' in contrast to proposals on lands within 'Established Development' areas which are conditional on further assessment.
 - Section 6.6.2 outlines the most suitable lands for housing in Ballyshannon. No 'Established Development' lands are included.
 - The 'Established Development' zone covers a large and varied area including schools, churches and even a hydro-electric power station. The zone cannot reasonably be deemed to include a residential use zoning nor can it be reasonably be concluded that residential use would be 'permitted in principle' given it's incompatibility with a hydro-electric power station etc.
- Provisions of the County Development Plan (CDP) also support the above arguments. These include policies in relation to

Letterkenny/Bundoran/Buncrana which are indicative of a county wide hierarchy of suitability for residential use.

- The planning authority has applied the incorrect question. It appears to have considered whether residential development can potentially be permitted within the 'Established development' zone rather than whether this zoning objective aims to secure residential use.

5.0 Determination by the Local Authority

5.1. The determination by the local authority is that the site should be retained on the RZLT map. The notification of the decision refers to the following reasons:

Having regard to:

- (i) *Section 3.2.1 of the RZLT Guidelines (p.12) wherein it is provided that 'land which is located within mixed use zones, which permit a variety of uses including residential should only be considered to be in scope for the tax where they are vacant or idle':*
- (ii) *The vacant nature of the site; and*
- (iii) *The proximity of the site to services including footpath, road, sewer, water and surface water*

The lands are considered to be in scope and should therefore remain on Donegal County Council's RZLT Map.

5.2. I note that there appear to have been two very similar assessments carried out for the local authority although the decision is based on a single recommendation.

5.3. The assessments include the following:

- In relation to the zoning of the site, and by reference to section 3.1.1 of the Guidelines, the site is considered to be within scope.
- In relation to services, and by reference to sections 3.1.1 and 4.0 of the Guidelines, relevant infrastructure is identified adjoining the site. This part of the assessment also references planning permission PA Ref. 19/51419 (erection of 2no. dwellings).

- A conclusion that, as the site enjoys the benefit planning permission, the default presumption for inclusion on the map applies.

While both assessments recommend that the lands in question are in scope and that they should remain on the RZLT map the reasons cited are slightly different. One is as per the local authority determination (Section 5.1 above). The other does not explicitly say that the site is considered to be vacant or idle and includes a reference to advice in the Guidelines in relation to land used for the purposes of agriculture or horticulture.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The documentation submitted includes the appellants original submission to the local authority as referred to at Section 4.0 above.

The appeal document includes the following introductory points:

- The local authority documentation includes two different assessments from different authors. While similar the recommendations and reasons are notably different.
- The assessments include only minimal references to zoning and do not address or evaluate the submission before the local authority and which was entirely based on the question of zoning.
- It is unclear on which recommendation the local authority determination is based.
- The Chief Executive's Order does not contain any reasons and considerations for the determination.
- The reasons and considerations cited in the notification of the decision relate to the vacant nature of the site and its proximity to services [Reasons (ii) and (iii)]. These matters were not raised or disputed in the submission to the local authority. While Reason (i) indirectly refers to zoning the reference is taken out of context and doesn't respond to the issues raised. The quote is taken from under the heading 'Vacant or Idle Definitions' in the Guidelines. This matter is irrelevant as it was not raised.

- The local authority's determination is not based on clear reasons and considerations relevant to the submission made.

6.1.2. The grounds of appeal relate solely to zoning and largely repeat the arguments contained in the submission to the local authority (see Section 4.0 above). Additional argument/information includes:

- The site does not have an established residential use. The previous use was as a rail station/ticket office serving the narrow gauge County Donegal railway. The rail line ceased operation in 1959 and any last trace of the line and building was removed sometime after 2005. The site has been undeveloped since then. So, the most recent established development or use of the site is as a public utility/transport service.
- Having regard to the varied nature of established uses within the 'Established Development' zone it is simply not plausible to suggest that a residential use would be 'permitted in principle'.
- The sheer extent of the 'Established Development' zone indicates that any suggestion that residential is 'permitted in principle' in the zone is not reasonable and would materially contravene the Core Strategy, the sequential development approach and associated CDP objectives.
- The 'Established Development' zone is not included in the Core Strategy housing supply calculations.

7.0 **Assessment**

7.1. As indicated the grounds of appeal in this case relate solely to the issue of zoning of the subject site.

7.2. Section 653B, Taxes Consolidation Act 1997, as amended, (the Act), sets out the relevant zoning criteria for inclusion of land on the RZLT map as follows:

- (i) Land that is zoned solely or primarily for residential use, or
- (ii) Land that is zoned for a mixture of uses, including residential use.

- 7.3. The Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022, (the Guidelines), at Section 3.1.1, provide advice on the interpretation of these criteria. This includes:

To satisfy the criteria land must be zoned residential use or for mixed uses, including residential.

This can include lands which are identified solely or primarily for residential purposes within a matrix and mixed use zonings where residential developments are permitted in principle.

All residential and mixed use zonings ...should be considered for the purposes of the tax.

- 7.4. I agree with the appellant that the site in question is not zoned solely or primarily for residential use and I note that the reasons cited by the local authority in its decision do not refer to this criterion. The focus, therefore, is on whether or not the zoning of the site can be considered to fall within the second criterion relating to a mixture of uses, including residential use.

- 7.5. As a first step, and by reference to the terminology used in the Act in this second criterion, wherein it relates to a mixture of uses (as opposed to a definitive zoning for 'mixed use'), I am satisfied that the zoning of the site for 'Established Development' does fall within its scope.

- 7.6. The appellants case essentially rests on an interpretation of the advice contained in the Guidelines that mixed use zonings should only be included where residential developments are permitted in principle in accordance with a zoning matrix. However, the advice as set out, and as summarised above, is not as definitive as this. It indicates that satisfying the mixed use zoning criterion can include mixed use zonings where residential development is permitted in principle within a zoning matrix. The use of the word 'can', in contrast to 'should', suggests that this is not an absolute stipulation and that other possibilities around interpretation/judgement are also contemplated. This is not surprising as, while many planning authorities use the zoning approach based on matrices, many do not. It is also noteworthy, in this regard, that the word 'must' is used in the preceding sentence in the Guidelines indicating an absolute requirement that lands are zoned for the purposes cited in the Act.

- 7.7. The absence of a zoning matrix, or the CDP/LAP otherwise indicating explicitly that residential development is permitted in principle in the zoning, is not, therefore, fatal to the inclusion of the site on the RZLT Map. However, this is not to say that the advice is not of considerable assistance in making a judgement on the proper interpretation of the mixed use criterion set down in the Act. In this regard, I would suggest that it indicates a relatively high bar for the inclusion of lands subject to zonings for a mixture of uses.
- 7.8. The appellant makes a strong case that it is not reasonable to conclude that residential development is effectively permitted in principle within the 'Established Development' zoning. The arguments refer to the zoning objective as stated and to other provisions of the LAP and CDP.
- 7.9. However, the arguments are made at a high or macro level by reference to the 'Established Development' zoning as a whole. The implication is that provisions or restrictions that might apply across the zoning necessarily apply to all individual lands/sites within the zoning. This would further imply that the RZLT is a broad brush measure such that all lands within a qualifying zone might be expected to be included on the map and to attract a tax, or, in the alternative, that no lands within such zones would be included. However, it is clear from the scheme of the legislation, and from the Guidelines, that this is not the case and that the focus is on identifying individual tracts of lands and individual plots that are suitably zoned and which are reasonably capable of being incentivised/activated for the provision of housing. Clearly this will not include all lands where the zoning is for a mixture of uses but it is highly likely to include some.
- 7.10. The appellant concedes that residential development can be allowed within the 'Established Development' zone. It is also the case that the subject site/plot has all the characteristics that would suggest that residential development is highly likely to be permitted. It is located in a primarily residential area, close to the town centre. It is part of a larger plot that is bounded on two sides by residential properties. It has good direct road frontage and is opposite further residential properties. Services are readily available. It is also the case that the site already has the benefit of a planning permission for residential development – PA Ref 19/51419, permission for 2no. houses, one of which would be on the subject site. This is a November 2019 permission and is still extant.

- 7.11. In the circumstances, therefore, I am satisfied that the subject site passes the ‘high bar’ test referred to above. The ‘Established Development’ zoning of the site falls within the legislative criterion of being zoned for a mixture of uses, the zoning allows for residential use and there is a very high probability of residential use being permitted on the site, for all intents and purposes equating to a ‘permitted in principle’ status. I also note the default provision in the Guidelines at Section 4.1.1(ii) and which suggests a presumption for the inclusion of lands with planning permission for housing to be within scope, subject to servicing and other matters.
- 7.12. The appellant has not contested that the site has access to all relevant services or suggested that it should be excluded from the map by reference to any other consideration. I am satisfied that the site does have access to all services and infrastructure necessary to facilitate its development for residential purposes and that it is not affected by any other matters/constraints that might preclude its development for such purposes.
- 7.13. The Act further provides [at section 653B(c)(ii)] that land that meets the said zoning criterion is only to be included if it is reasonable to consider that the land is vacant or idle. It should be noted that the appellants contention that this matter is irrelevant as it was not raised in the submission to the local authority is not accepted. The Board is required to consider the local authority determination which expressly refers to this matter.
- 7.14. Section 653A(1) of the Act defines vacant or idle land as follows:
‘vacant or idle land’ means land which,....., is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.
I am satisfied that the subject site falls within this definition.
- 7.15 In conclusion, therefore, I consider that the subject site satisfies the relevant criteria for inclusion on the RZLT map and that the appeal in this instance should not be upheld.

8.0 Recommendation

8.1. I recommend that the Board should confirm the determination of the local authority.

9.0 Reasons and Considerations

Having regard to:

- The determination of the local authority;
- The submitted grounds of appeal;
- The provisions of section 653B, Taxes Consolidated Act 1997, as amended, (the Act);
- The zoning of the site for 'Established Development' under the Seven Strategic Towns Local Area Plan (Ballyshannon) 2018-2024 and which is considered to satisfy the criterion of being zoned for a mixture of uses, including residential use;
- Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022, in particular Sections 3.1.1 and 4.1.1;
- Planning Authority Ref 19/51419, an extant permission for housing on lands that includes the subject site;
- The ready availability of services and infrastructure to facilitate the development of the site for housing; and
- The site being vacant or idle within the meaning prescribed in the Act;

It is considered that the site, falling within Parcel ID DLLA00001631, has been properly included and should remain on 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.

Brendan Wyse
Assistant Director of Planning

18 October 2023