



An
Bord
Pleanála

Inspector's Report ABP-316859-23

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	Derryginny, Ballyconnell, Co. Cavan
Local Authority	Cavan County Council
Local Authority Reg. Ref.	RZLT07 Draft Map Submission no. 12
Appellant(s)	Estate of Terence McGovern
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located to the west of the centre of Ballyconnell. The site has a stated site area of 3.19 hectares. The site has considerable road frontage onto a local tertiary road to the west and additional road frontage onto the R205 Regional Road along the eastern site boundary. There is existing medium density residential development located to the north-east and south of the subject site.
- 1.2. The site falls steadily in a general south-west to north-east direction.

2.0 Zoning and other provisions

- 2.1. The subject site is zoned 'Proposed Residential' in the Cavan County Development Plan 2022 to 2028 and is identified as a 'Consolidation Site' on the Ballyconnell Land Use Zoning Map.
- 2.2. There is also a separate Map Based Specific Zoning Objective (No. 3) shown on the Ballyconnell Land Use Zoning Map, which relates to the adjacent public road fronting the site along the western site boundary and states: *'Support the upgrade of existing local road (L5049-0) between the N87 and the R205 in the Derryginny area of the town.'*
- 2.3. Part of the north-west of the site along the existing stream is in Flood Zone A.

3.0 Planning History

- 3.1. Planning history for adjacent area:
- 3.2. PA Reg. 071633: Terence McGovern. Retention permission to retain alterations to previously approved housing development (Planning Ref: 04/2106), comprising covered entry and alterations to houses no. 2, 3, 8, 9, 14, 15 together with revised entrance with feature entrance, walls and relocated hammerhead. Retention permission was GRANTED on 24/10/2007 subject to 2 no. conditions. (Adjacent site to the immediate north of the subject lands).
- 3.3. PA Reg. 04/2106: Terence McGovern. Planning permission to construct housing development consisting of 18 no. two storey dwellings. Permission was GRANTED on

09/05/2005 subject to 33 no. conditions. (Adjacent site to the immediate north of the subject lands).

- 3.4. PA Reg. Ref. no. 90/18880: Terence McGovern. Planning permission to erect garage, utility and fuel store and toilet. Permission was GRANTED on 05/11/1990. (Subject lands).
- 3.5. PA Reg. Ref. 64/7846: Terence McGovern. Outline planning permission for 11 no. Bungalows. Outline planning permission was GRANTED on 29/07/1977. (Subject lands).

4.0 **Submission to the Local Authority**

4.1. The Appellant made a submission to the Local Authority seeking to have:

- Part of the lands rezoned,
- Part of the lands excluded from scope on the basis of their integral relationship to the operation of a business carried out on or beside it,
and
- Part of the lands to be excluded from scope due to physical and infrastructural constraints.

4.2. The Appellant states that the submission is made without prejudice to the existing or potential future development of the lands in question.

4.3. Amendment to Zonings. The Appellant requests:

- A change in zoning from 'Proposed Residential' to General Enterprise and Employment' or 'Town Core' on the lands adjoining the R202 and the Credit Union.
- A change in zoning from 'Proposed Residential' to 'Open Space/ Buffer' on the lands adjoining the Woodford River.

A layout plan is submitted as part of the submission to the Local Authority.

4.4. Exclusion of the basis of lands which are integral to the operation of a business carried out on or beside it. The Appellant states that the lands, the subject of the submission,

are in the Estate of the Terrence McGovern Building Contractor which developed the adjoining residential development of Derryoaks. The Appellant states that this development has not been taken in charge and that the Appellant (the Estate of Terrence McGovern) continue to maintain the development, provide grass cutting, maintenance of open spaces and services of Derryoaks Residential Development to a high standard.

- 4.5. The Appellant references an area of land at the northern end of the subject site, adjacent and to the north-west of the Derryoaks Residential development, which is stated to be used as part of the operation or trade of the Estate of Terrence McGovern. This use is stated to have comprised of the parking of vehicles, storage of materials associated with and ancillary to the operation of the trade of the Estate and is stated to have historically and is currently providing day-to-day services to residents of adjacent residential areas and commercial areas including (but not limited to) of Derryoaks Development. The Appellant states that it is clear that this is excluded from the scope of the RZLT. The Appellant references an aerial photo which is stated to be of the equipment and the extent of area required to provide this service.
- 4.6. Exclusion from scope of area zoned Low Density Residential by reason of infrastructural constraints. The Appellant considers that there are infrastructural constraints relating to the lands which would preclude development taking place. The said constraints are stated to include the lack of a footpath between the site and the town centre/ intersection of the R202/ N87 and the ability to provide footpaths to the required standard.
- 4.7. The Appellant considers that accordingly it is not reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to the developed and with sufficient serve capacity available for such development.
- 4.8. The Appellant states that the legislation does not require all the constraints to be in place to provide an exclusion from RZLT or to allow the provision of mitigation measure or 'conditions' that would normally be applied in the event of a planning application was submitted. The Appellant considers that in this case there is no physical possibility of providing an adequate and safe means of footpath provision from the site to the

town centre, via the junction of the R202 and the N87 in the absence of significant works to the junction on lands not in the ownership of the Local Authority or the landowner.

- 4.9. The Appellant states that in addition, having regard to the extreme variations in gradient and topography rendering construction of dwellings on site significantly affected by the physical condition of the lands, it is reasonable to consider the lands area affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings. The Appellant references a photo which is stated to show gradient and relative land levels/ heights.

5.0 Determination by the Local Authority

- 5.1. The Local Authority issued a determination to include the subject land in the final map of the Residential Zoned Land Tax.
- 5.2. It has been determined that the site in question fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1997 (as introduced by the Finance Act 2021) and the 2022 Section 28 Ministerial guidelines 'Residential Zoned Land Tax – Guidelines for Planning Authorities' for inclusion on the RZLT map.
- 5.3. Matters which are unrelated to the criteria identified in the submission as per Section 653B of the Act, such as, planning permissions, commencement on land-in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions.
- 5.4. The topography and gradients of the subject lands could facilitate residential development, subject to the proposed planning and sustainable development of the area.
- 5.5. In accordance with Residential Zoned Land Tax – Guidelines for Planning Authorities, June 2022, it is not considered appropriate to remove the subject lands from the RZLT draft map because, as stated in the submission, the lands are 'integral' to the running of a business operation associated with the provision of services to adjoining residents. Existing uses can be excluded from the scope of mapping for the tax measure if they are providing a service to the existing and future residential communities, are an authorised use and area considered a premises in use by a trade

or profession and must be liable to commercial rates. The said stated use of the subject land has no planning permission granted for this use. In addition, no commercial rates are paid for this use/ land.

5.6. 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

6.2. The Grounds of Appeal are summarised as follows:

- The Appellant states that the submission is made without prejudice to the existing or potential future development of the lands in question.
- The Appellant Requests an Amendment to Zoning. This element of the Appeal is presented in 2 no. main sub parts referenced as 1 a) and 1 b).
- Item 1 a). The Appellant refers to the lands being zoned 'Proposed Low Density Residential' and seeks that the eastern part of the site facing onto the R202 Regional Road be rezoned either as Commercial or General Enterprise and Employment or Town Centre use. In support of the proposed rezonings the Applicant references a recently submitted tender to the HSE for the development of a primary care facility on a portion of the land. The Appellant also references pre-planning discussions held in late 2019 with the Local Authority in relation to such a proposal. The Local Authority has failed to address the merits of the proposed commercial zoning on this site. The suitability of the site in terms of its location within the town centre, the opportunity to create a streetscape at this location and the proposal for a primary care centre is considered by the Appellant to clearly set out the suitability for zoning the eastern portion of the site for commercial use and the removal of the land from the scope of the LVT.
- Item 1 b). The Appellant seeks to rezone an area of the overall site to Open Space zoning. This part of the site is located adjacent to a watercourse which is stated to flow into the Woodford River and a private laneway which accesses the rear of a private residence.

- The Appellant is seeking to exclude a certain area of the site based on them being lands which are integral to the operation of a business carried out on or beside it. The Appellant (Estate of Terrance McGovern Building Contractors) is stated to have developed the adjoining residential development of Derryoaks. The Appellant states that Derryoaks Residential Estate has not been taken in charge and that they continue to maintain the development, provide grass cutting, maintenance of open spaces and services of the said residential estate. The Appellant considers that it is clear that this is excluded from the scope of the RZLT. A map of the area is provided. The Appellant has provided an aerial photograph which is stated to be of the *'equipment and the extent of area required to provide this service.'*
- The Appellant is seeking to exclude from scope the area zoned Low Density Residential. The Appellant contends that this should be removed from scope based on the lack of a footpath/ pedestrian linkages/ traffic safety and junction capacity. The Appellant contends that it is not reasonable to consider the site may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.
- Also under Item no. 3, the Appellant states that it is reasonable to consider the lands are affected, in terms of physical condition, by matters to a sufficient extent to preclude the provision of dwellings. The Appellant refers to the extreme variations in gradient and topography. The Appellant considers that the topography of the site and its gradients make the site inappropriate and unviable for residential development.
- The Appellant considers the Report of the Local Authority to be generic in its detail and does not clearly specify current land legislation guidelines. The Appellant considers that the Local Authority Report fails to identify that the current public infrastructure to the site is inadequate to safely provide any provision for potential housing requirements. The Appellant references the lack of any public pedestrian footpath access from the town centre along the left hand side of R205. The Appellant considers this to be a traffic safety issue.

- The Appellant wishes to express their disappointment at reference in the reasons from the Local Authority that *'matters unrelated to the criteria ... such as planning permission and personal circumstances are not matters to be taken into account'*. The Appellant states that they have not referred to either of those issues in their submission of 1st January or used as part of their rationale. The Appellant refers to *'other inaccuracies in the assessment'*. No further comment in relation to such *'other inaccuracies'* is provided.

7.0 Assessment

- 7.1. The comments raised in the Appeal are noted.
- 7.2. The Appellant is seeking to rezone 2 no. areas of the subject lands and has presented such proposed rezonings under Items 1 a) and 1 b) of the Grounds of Appeal. The Local Authority previously assessed the proposed rezonings and determined that the current *'proposed residential'* zoning should remain. The Board is restricted in its determination of the Appeal to the criteria set out in Section 653B of the Act. The proposed rezoning of lands does not fall within the said criteria.
- 7.3. The Appellant is seeking to exclude a certain area of the site from inclusion on the Map. The Appellant considers that this area should be excluded as they are lands which are integral to the operation of a business carried out on or beside it. The Local Authority has included this area of the site within scope and confirm in the determination dated 23/03/2023 that there is no planning permission granted for this use and that no commercial rates are paid for this use/ land.
- 7.4. This area of the site has the appearance of a construction compound associated with the adjacent residential development to the immediate south-east. The area is not, in my opinion, an area upon which a trade or profession is being carried out. The area is not liable to commercial rates, as noted in the Report from the Local Authority. The area, in my opinion, is not a trade or profession providing day to day services to residents or adjacent residential areas.
- 7.5. The said area of the site does not therefore fall within the scope for exclusion from the map, as per the provisions of Section 653B c) i) which relates to land *'that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act*

of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provides services to residents of adjacent residential areas’.

- 7.6. This area of the site should therefore remain on the Map.
- 7.7. The Appellant is seeking to exclude from scope the area zoned Low Density Residential. The subject lands are in fact zoned New Residential and not Low Density Residential as the Appellant states. The Appellants justifications are noted in this regard.
- 7.8. Uisce Eireann (UE) confirm in relation to Water Networks that a water main exists on the public road in close proximity to the site. It is further stated that available GIS data indicates the water network is accessible via watermains in the road adjoining the western boundary of the land parcel, as well as in the R205 along the eastern boundary. It is further stated that alternative access to the network may also be available in the adjacent Derryoaks estate. Finally, in relation to Water Networks, UE state they have no information as to the ownership of the lands surrounding the land parcel. No water supply capacity issues are raised by Uisce Eireann.
- 7.9. It is noted that the Ballyconnell water resource zone (WRZ ID: 0200SC0011) is stated to have Capacity Available - LoS improvement required (Capacity Available - LoS improvement required means *'Capacity Available to meet 2032 population targets - Level of service (LoS) improvement required. Leakage reduction and/or capital investment will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process'*).
- 7.10. I am therefore satisfied that there is a viable water supply/ connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of water supply.
- 7.11. Uisce Eireann (UE) confirm in relation to Wastewater Networks that a sewer exists on the public road in close proximity to the site. It is further stated that available GIS data, indicates that the sewer is accessible along the R205 adjoining the land parcel. It is further stated that alternative access to the network may also be available in the adjacent Derryoaks estate. Finally, in relation to Wastewater Networks, UE state they

have no information as to the ownership of the lands surrounding the land parcel. No Wastewater capacity issues are raised by Uisce Eireann.

- 7.12. It is noted the Ballyconnell Wastewater Treatment Plant (WWTP) (Ref. D0253) is indicated to have an Amber status on the Uisce Eireann Wastewater Treatment Capacity Register published in June 2023. It is further noted that a WWTP Project for Ballyconnell is either planned or underway. Amber status is stated to mean *'potential spare capacity, applications to be considered on an individual basis considering their specific load requirements.'*
- 7.13. I am therefore satisfied that there is a viable wastewater connection available in proximity to the site and that therefore the site can be reasonably serviced in terms of wastewater.
- 7.14. Having regard to the current 'New Residential' zoning of the lands, the identification of the site as one of two 'opportunity sites' in Ballyconnell, the location and proximity of the site relative to the centre of Ballyconnell and the existing public services in place proximate to the site, I am satisfied that the subject site satisfies the criteria for inclusion on the map as per the provisions of Section 653 B b) of the Act, which states *'it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, ...'*
- 7.15. Although there is a considerable gradient on the subject site, which falls in a general south-west to north-east direction, it is noted that there is an established residential development (Derryginny Gardens) on the adjacent site to the immediate south. This development backs onto the local road to the west of the subject site and fronts onto the R205 to the east. The gradient on that site is similar to that of the subject lands. I am satisfied that the gradient and topography of the site are not such that would preclude the residential development on the subject lands.
- 7.16. There is a stream which runs along the northern boundary of the lands in front and to the north of Derryoaks residential development. This stream flows in a south-east direction under the R205 joins the Woodford River further to the south-east. Approximately 82 metres of the northern site boundary is located adjacent to this stream. There is also an existing access road at this location which runs to the north

of Derryoaks and serves a private residence to the further to the north-west. This area of the site, i.e. effectively the stream channel itself, is identified on CFRAM Flood Mapping (www.flooding.ie) as being within Flood Zone A (i.e. 1 in 100 year). The stream banks are shown to be located within Flood Zone B (i.e. 1 in 1,000 year flood event). I am satisfied that the extent of the subject site which is shown to be at risk of flooding is such that it does not preclude the development of the overall site for residential purposes.

7.17. The remaining Grounds of Appeal do not relate to any of the relevant qualifying criteria set out in Section 653B of the Act.

8.0 Conclusion

8.1. The site is within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The site does satisfy the criterion for inclusion on the map set out in Section 653B(c) of the Taxes Consolidation Act 1997, as amended.

9.0 Recommendation

9.1. I recommend that the Board confirm the determination of the Local Authority and that the indicated site be retained on the map.

10.0 Reasons and Considerations

10.1. The lands identified as Draft Map Submission no. 12, meet the qualifying criteria set out in Section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion from the map.

10.2. The Board is restricted in its determination of the Appeal to the criteria set out in Section 653B of the Act. The proposed rezoning of lands does not fall within the said criteria.

10.3. The subject site satisfies the criteria for inclusion on the map a per the provisions of Section 653 B b) of the Act in respect of access, public infrastructure and facilities, including road and footpaths, public lighting, foul sewer drainage, surface water

drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

- 10.4. The area of the site which has the appearance of a construction compound does not fall within the scope for exclusion from the map, as per the provisions of Section 653B c) i) of the Act.
- 10.5. The gradient and topography of the site is not such that would preclude the residential development.
- 10.6. The extent of the subject site which is shown to be at risk of flooding is such that it does not preclude the development of the overall site for residential purposes.
- 10.7. The Grounds of Appeal do not support a different conclusion in relation to this matter.
- 10.8. 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.

Frank O'Donnell
Planning Inspector

27th July 2023