



An
Bord
Pleanála

Inspector's Report

ABP-317052-23

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	Lands at Carndonagh, Lifford, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	DNCC-C3-DCC-14
Appellant(s)	Donal and Patrick Doherty
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is situated on the corner of the R238, opposite the junction for the R244. It is located west of Moss Road and north and east of the R238 with frontages onto both of these roads. The site is agricultural/greenfield in character. It immediately abuts the residential estate for Ard Colgan to the north and is situated adjacent to housing and agricultural fields to the east. The site is identified by parcel ID DLLA0000409 under the RZLT Map.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Opportunity Site' (Opp 3) in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024.

- 2.2. The LAP states with respect to Opportunity Site 3:

“Opportunity Site 3 (Map 5 refers) - Regional Road R238 and Moss Road This site of approximately 2 hectares has dual frontage onto Regional Road R238 and the Moss Road. The site benefits from a pedestrian footpath along the entirety of its road frontage and is located in close proximity to Carndonagh Community School and within walking distance of the town centre. This significant corner site is very prominent when approaching from the northwest along the R238 or from the south along the R244. Furthermore, the site is located directly opposite St. Patrick’s High Cross and associated archaeological monuments and opposite Donagh Parish Church, a Protected Structure – indeed, the site is in fact the original location of three stone monuments: the high cross (DG011- 035005) and two flanking carved pillar stones (DG011-035007 and DG035008), which were later moved to a new location on the southern side of Regional Road R238. Policy CN-OPP-3 refers.”

- 2.3. Policy CN-OPP-3 states:

“It is a policy of the Council to consider proposals for residential development, commercial or tourism-related development on Opportunity Site 3; or for development providing for a combination of some, or all, of the aforementioned uses subject to compliance with the undernoted criteria, all other relevant policies of the LAP and taken in the context of the proper planning and sustainable development of the area. Any development proposals for this site must be sensitively designed such

that the development (a.) would be primarily located on the eastern (lower) side of the site, (b.) would not impinge in any significant way on the character and setting of the current High Cross site nor on the setting of Donagh Parish Church, (c.) would not impinge in any significant way on northerly views when approaching the site on the R244, (d.) would provide for extremely high quality building design that has regard to the scale and vernacular character of buildings within the town, (e.) would provide for high quality landscaping throughout the site and along all road frontage areas and (f.) includes proposals for the provision of an Inner Relief Road in accordance with Policy CN-IS-2 of this Local Area Plan. Any development proposal must be accompanied by a detailed archaeological assessment of the site. Proposals for retail development on this site shall not be favourably considered unless it can be demonstrated that the proposal would comply with the County Retail Strategy.”

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 relates to a number of parcels of land in the same ownership in Carndonagh. It stated that:

- The land marked A on the attached map is not serviced by either water, sewer or road access and there is only an agriculture Right of Way over third party owned land to the field.
- The land marked B could be of significant archaeological interest being the original site of the Donagh Cross with preliminary archaeological surveys undertaken in recent years.
- The land marked C is attached to and forms part of the farmyard and thus is not suitable for development.
- The land is actively farmed and has been going back to 1912. There is no intention to develop the land.

- The land should not be considered vacant or idle under the definition of the RZLT.
- Request to change the zoning of the land from residential.

5.0 **Determination by the Local Authority**

5.1. The local authority provided an assessment of the site with reference to the RZLT Guidelines, confirming the following:

- The site is zoned as 'Opportunity Site' in the Seven Strategic Towns Local Area Plan 2018-2024 and is therefore in scope.
- There is no previous planning permissions on the site.
- The subject site is adjoins the public road to the east, west and south. There is a footpath surrounding the entire site, and public lighting infrastructure is available to the west and south of the site. There is no public lighting to the east of the site. Conclusion is that infrastructure adjoins the site.
- The nearest existing public wastewater network adjoins the site to the west. An Irish Water mains adjoins the subject site.
- Submission notes that land 'could be of significant archaeological interest being the original site of the Donagh Cross.' The sculpture has since been moved to another location.

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**

6.2. The grounds of appeal relate to ABP appeal reference no.'s 317049, 317051, 317052, 317054 and 317055.

- Donegal County Council (DCC) refers to land identified on the attached map but no such map has been provided.

- DCC have erred in law and in fact in reaching a conclusion that the lands identified should remain in scope, with reference to conclusions that the lands are serviced within the meaning of Part 22A of the Taxes Consolidation Act 1997 as inserted by the Finance Act 2021.
- DCC failed to engage adequately with the submissions of landowners.
- DCC failed to make a decision which complies with the requirements of the Act.
- DCC has failed to take account of the provisions of the RZLT Guidelines.
- DCC failed to consider adequately or at all the water supply and sewerage issues which exist in the Carndonagh locality at present and the capacity issues which would be faced by any residential development of the lands.
- DCC has failed to consider that the lands are neither vacant or idle.
- DCC failed to adequately weigh the housing needs in the area in comparison to the land zoned.
- DCC failed to consider that the landowner has never been approached by developer seeking to purchase and/or develop the land.
- Opportunity sites & Strategic residential reserve should not be liable for the tax as they won't get planning and can't be sold at development value until the other sites are developed.
- DCC failed to consider that there are ghost estates within the area including Gerard's Way, Hattersly Park & Woodlands which have not been fully developed and include unoccupied houses.
- DCC failed to take into account that there is a substantial housing development in progress which will produce 54 houses at Convent Road in Cardonagh.
- DCC failed to consider that there is currently a planning application for development of 35 houses at Malin Road Carndonagh.
- DCC failed to consider the lands constitute a family run privately owned farmed.

- DCC failed to consider the effect of this tax on the farm which could not be sustained.
- DCC failed to consider the importance of maintaining family run farms as a critical element of rural Irish life.
- DCC failed to consider the stress and anxiety this tax is having on the local farming community.

7.0 Assessment

- 7.1. The site is zoned Opportunity Site 3 in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024. Residential development is a permissible use according to this zoning allocation.
- 7.2. The Taxes Consolidation Act 1997 as amended by the Finance Act 2021, includes in section 653B the criteria for inclusion in the map. This states that it is applicable to lands zoned '(a) (i) solely or primarily for residential use, or (ii) for a mixture of uses, including residential use' but not land '(c) (ii) that is referred to in paragraph (a)(ii) unless it is reasonable to consider that the land is vacant or idle.' The land is not zoned for mixed use, and therefore the exemption under part (c)(ii) does not apply.
- 7.3. The RZLT Guidelines confirm that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. The fact that the lands are in 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. I note the grounds appeal raise the matter of water infrastructure capacity. The capacity register for Uisce Éireann confirms that with respect to wastewater Carndonagh is 'Amber'. This means that there is potential spare capacity, with applications to be considered on an individual basis considering their specific load requirements. With respect to water supply, the capacity register states that Carndonagh has 'Potential Capacity Available - LoS improvement required'. This means that capacity constraints exist, and connection applications will be assessed on an individual basis considering their specific load requirements. Level of service (LoS) improvements are required to meet 2032 population targets. This does not

demonstrate insufficient capacity to serve new residential development in Carndonagh, with applications to be assessed on a individual basis, and therefore I accept the Councils conclusions with respect to the ability to service the site.

7.5. In relation to the potential for archaeology on the site, the LAP specifically acknowledges this in policy CN-OPP-3 which requires “...*Any development proposal must be accompanied by a detailed archaeological assessment of the site...*” Development of the site for residential use is therefore not expected to be prevented due to archaeology on the site, which can be adequately addressed (and mitigated if necessary) by way of a specific assessment as set out in policy CN-OPP-3 for the site.

7.6. As a result of the foregoing, I consider 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.

Rachel Gleave O'Connor
Senior Planning Inspector

15 August 2023