



An
Bord
Pleanála

Inspector's Report

ABP-317054-23

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-13

Appellant(s)

Donal and Patrick Doherty

Inspector

Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is situated to the east of Moss Road, north of housing that fronts the R238 and south of a garden centre. The site is agricultural/greenfield in nature and abuts agricultural land to the east. The site is identified by parcel ID DLLA0000261 under the RZLT Map.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Primarily Residential' in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024, under site ID PR2. Indicative Vehicular Access and Indicative Pedestrian Access are also included on the zoning map traversing along the northern edge of the site.

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 'Primarily Residential' 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 adjoins the public road to the west of the site. However, there is no public lighting and a footpath runs along the west of the road. Conclusion is that minor works to provide public lighting is needed.
- The nearest existing public wastewater network runs directly through the site. An Irish Water mains adjoins the subject site.

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 Primarily Residential 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 an individual basis, and therefore I accept the Council's conclusions with respect to the ability to service the site.
- 7.5. Existing footpath provision is in place immediately adjacent to the site on Moss Road, albeit on the opposite side of the road. It is within the normal parameters of any development proposal to provide footpath provision on road frontages, and this would connect into the existing network for the area. As the site fronts onto a public road, servicing can be achieved via publicly owned lands.

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