



An
Bord
Pleanála

Inspector's Report

ABP-317055-23

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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 | Lands at Carndonagh, Lifford, Co. Donegal. |
| Planning Authority | Donegal County Council |
| Planning Authority Reg. Ref. | DNCC-C3-DCC-11 |
| 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 Ard Colgan and west of Moss Road, to the north of the Ard Cogan residential estate and south of Cedar Grove residential estate. The site is currently formed of agricultural/greenfield and immediately abuts residential estates, with frontage onto Ard Colgan and Moss Road. The site is identified by parcel ID DLLA0000310 under the RZLT Map.

2.0 Zoning and other provisions

2.1. The site is zoned 'Strategic Residential Reserve' in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024.

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 'Strategic Residential Reserve' 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 connected to public road to the immediate east of the site. There are also public lighting and footpath infrastructure adjoining the site. the site also adjoins a public road to the immediate west of the site. There is public lighting, however there is no footpath serving the side of the road which would act as an access to the site. Conclusion is that infrastructure adjoins the site.
- There are existing public networks to the immediate north and south of the subject site which can be extended to service the site. An Irish Water mains adjoins the subject site to the immediate east.

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 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.
- 7.2. 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.
- 7.3. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997 (as amended) land must be zoned residential use or for mixed uses including residential. The site is zoned 'Strategic Residential Reserve' in the Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024. Table 3.1: Zoning Objectives on page 13 of the LAP gives an objective for Strategic Residential Reserve 'To reserve land for residential development as a long term strategic landbank'. Policy GEN-H-6 of the LAP states that *"It is a policy of the Council to secure an adequate supply of strategic landbanks for the purposes of housing provision beyond the life of this LAP through the identification of lands as a 'Strategic Residential Reserve.' The Council will examine and manage the appropriate release of 'Strategic Residential Reserve' lands on the basis of a continued assessment of need and levels of supply. The release of 'Strategic Residential Reserve' lands for multiple residential development (i.e. 2 or more dwellings) shall only be carried out in the context of a review or*

amendment of the LAP.” Policy GEN-H-8 goes on to confirm that proposals for multiple housing developments (2 or more) will not be considered on areas zoned Strategic Residential Reserve, and single dwellings will only be permitted where specific criteria are satisfied (as outlined in the policy and relating to amenity and compliance with other policies and objectives of the plan).

- 7.4. While the plan expressly prohibits development of Strategic Residential Reserve lands for multiple housing developments, a set of criteria are provided, which if satisfied, enable development of the lands for single dwelling housing. However, the RZLT Guidelines outline that the purpose of the RZLT *“is to activate existing planning permissions and zonings where housing is permitted and where the land is connected to, or has access to services, but remains undeveloped. It is primarily intended to influence behaviour towards increased housing output.”* This clearly relates to the delivery of multiple housing units on sites, and is not targeting the delivery of one-off housing. As such, the site cannot be considered zoned for residential development (for the purposes of the RZLT) during the lifetime of the plan.
- 7.5. 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.
- 7.6. As a result of the foregoing, and with particular regard to the Strategic Residential Reserve zoning which restricts multiple housing development on the site; the site is not currently zoned for residential development, and therefore is not in scope for inclusion on the RZLT map.

8.0 Recommendation

- 8.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

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 zoned 'Strategic Residential Reserve' under Seven Strategic Towns Local Area Plan (Carndonagh) 2018-2024. Table 3.1: Zoning Objectives on page 13 of the LAP gives an objective for Strategic Residential Reserve 'To reserve land for residential development as a long term strategic landbank'. Policies GEN-H-6 and GEN-H-8 of the LAP also identify that the development of multiple housing developments (2 or more) will not be considered on areas zoned Strategic Residential Reserve. As such, the site is not currently available for residential development within the lifetime of the County Donegal Development Plan 2018-2024, and as such cannot be considered in-scope for the RZLT.

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