



An
Bord
Pleanála

Inspector's Report ABP-317911-23.

Type of Appeal	Appeal under section 653J(2) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map
Location	Lands at Carrownacurry, Castlebar (East of the R310 Pontoon Road)
Local Authority	Mayo County Council
Local Authority Reg. Ref.	RZL-048
Appellant	Thomas, Kathleen, and Eimear Moran
Inspector	Emma Nevin

1.0 Site Description

- 1.1. The site is located in the townland of Carrowcurry, to the east of Pontoon Road and to the north of Castlebar. The site relates to a backland site to the northeast of the existing residence (in the appellants ownership), which has frontage along Pontoon Road. The site runs to the rear of the existing dwellings along Pontoon Road and adjoins the lands subject to RZLT049 (ABP-317912-23) to the south.
- 1.2. The site area pertaining to Parcel ID: MOLA00003398 is indicated as 3.54 hectares.
- 1.3. It should be noted that the adjoining land parcel to the east-southeast, is subject to a separate RZLT appeal under ABP-317912-23. This site is in the ownership of the appellants family and is identified under the same Parcel ID: MOLA00003398.

2.0 Zoning

- 2.1. The site is zoned under the Castlebar Town and Environs Development Plan, 2008-2014 "Objective B New Residential (Medium Density)", with a stated objective;

- *"To provide for new residential development, associated facilities and services."*

- 2.2. While it is noted that the Castlebar Town and Environs Development Plan, 2008-2014, expired in 2014, regard is had to the Mayo County Development Plan, 2022-2028, which includes the following objectives:

- Objective CSO3, which states;

"To adopt Local Area Plans for Ballina, Castlebar and Westport that align with the NPF, RSES and this Core Strategy. During the transition period between adoption of this County Development Plan and the adoption of the Local Area Plans for Ballina, Castlebar and Westport, the objectives (including zoning objectives), policies and standards in this County Development Plan shall apply to these towns".

- Objective SSO 13 which states;

"The land use zoning provisions of the existing town and environs development plans for Ballina, Castlebar and Westport shall continue to be implemented on an interim basis until such time as local area plans are adopted for these towns, whilst also having regard to any draft local area plan, and subject to compliance with the

provisions of the Mayo County Development Plan, including the Core Strategy population/housing targets”.

- 2.3. As such the subject site is zoned for residential as noted above.
- 2.4. Section 12.3 of the Mayo County Development Plan, 2022 – 2028, also states that *“Individual local area plans will be prepared for the Tier I towns of Ballina, Castlebar and Westport, as statutorily required under the Planning and Development Act 2000 (as amended)”.*

3.0 Planning History

None located.

4.0 Submission to the Local Authority

- 4.1. This submission related to lands located off Pontoon Road, Castlebar, Co. Mayo in the townland of Carrowncurry.
- 4.2. The submission requests that the land be excluded from the Supplemental Map on the basis that the land does not meet the criteria set out in Section 653(B) of the Finance Act, 2021.
- 4.3. The submission states that the land does not have access to necessary roads, footpaths, public lighting, and public water supply, for residential development.
- 4.4. It is stated that the land is surrounded by third party lands and has no right-of-way access to the indicated site/land and therefore access from any public road to the subject land is not possible.
- 4.5. There is no right-of-way access available from the Turlough Road, any access from Thornbrook Estate would require going through third party lands. Land adjoining ‘The Brambles Estates’ is in third party ownership with no right-of-way.
- 4.6. The submission also highlights that access to the land from the Pontoon Road is serviced by a narrow laneway which adjoins a private dwelling. It is stated that the said laneway is contained within the curtilage of the private dwelling and is below the DMURS minimum standards. No right of way access from the Pontoon Road to the indicated lands in the submission.

4.7. It is requested that the land be rezoned to 'Agriculture' which is the current use of the land.

5.0 **Determination by the Local Authority**

5.1. The subject land is located zoned Objective B New Residential Medium Density Phase 2 of the Castlebar Town & Environs Development Plan 2008 – 2014.

5.2. The local authority notes that the submitter(s) state in the submission that they own the private road/laneway, dwelling and subject lands (indicated on maps provided as part of the submission). However, Map 1 does not indicate the location of the submitter(s) dwelling. No folio details or folio maps are provided. This does not show the full extent of the submitter's lands/property at this location, nor does it indicate the location of their dwelling.

5.3. Noting the submission received pertaining to immediately adjoining lands (RZL 049), it would appear that all parties (i.e. that of RZL 048 and 049) are from the same postal address (as per the code cited on the respective submissions).

5.4. It is therefore not clear if the entirety of lands (RZL048 and RLZ049) is within the same family landholding, given the shared postal address of both submissions received.

5.5. In line with Section 653G(4) of the Finance Act, 2021, proof of ownership of the site/lands in determining whether Section 653H applies to a submission.

5.6. In terms of access, it would appear that based on the information included in the submission that there are two accesses within the curtilage of a private dwelling, one of which appear to be a private road/laneway with direct access from the Pontoon Road to the indicated lands. Clarification was sought in relation to the permitted access serving the private dwelling referred to as the submitter's residence. In this regard, the submitter(s) were asked to clearly indicate the location of residence of all three listed parties and to clearly indicate the access arrangement within the curtilage of the referred-to-dwelling (as per the submission). Furthermore, clarification was sought to provide details in respect of the planning permission/consent obtained for the access arrangement serving the 'dwelling' and to clarify if the said dwelling is their private dwelling or that of a third party.

- 5.7. In terms of foul sewer and surface water, the local authority note that the surface water and wastewater networks run along the private road/laneway which extends from Pontoon Road into the subject lands.
- 5.8. In terms of water the water network is located along the Pontoon Road, and it would be possible to connect to the said network once proof of ownership of land is established.
- 5.9. In terms of the re-zoning request, the local authority states that any request for zoning change to remove the lands from scope is subject to the outcome on adoption of the new Castlebar Town and Environs LAP, later this year or by variation process for the plan. Until such time as the appropriate process is completed or the zoning has changed, the land remains in scope. The subject lands shall remain in scope for the purposed of RZLT map, until such time as variations to the zoning may come into effect.
- 5.10. The site is currently zoned for the development of housing. The location is well served by road, footpath and public lighting network, as well as water, wastewater and surface water services. Access would appear available to the subject land parcel via a private laneway from the Pontoon Road. This access would appear to be included within the property stated as the postal address by the submitter.
- 5.11. It is not clear if both land parcels are extracted from the same family landholding.
- 5.12. Clarification was sought from the Council from the submitter seeking proof of ownership and details of the full family landholding, and the access arrangement contained within the curtilage of the dwelling. No response has been furnished to the local authority.
- 5.13. Therefore, having regard to the details submitted in the submission, the scoping considerations as per Section 653B of the Act, the gaps in information submitted, together with the fact that no response has been made to the request by the local authority for the information which would assist in making its determination in respect of these lands, it is considered that there is insufficient detail provided to justify removal from scope of the RZLT map.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant states that the letter received from Mayo County Council requested additional information on the folio details to confirm:
 - (i) the ownership of the lands.
 - (ii) Details other lands/property in the collective/individual ownership that adjoins the subject lands.
 - (iii) “Having regard to what appears to be shared residential/postal address with additional parties who have also made a submission on lands that immediately adjoin your land/site (as indicated), please clarify if the subject site/land parcel forms part of a shared landholding. Please provide an OS map clearly indicating location of your residence”.
- The appellant has clarified that the lands RZL048 are owned by Thomas and Kathleen and Eimear Moran.
- The appellant has also clarified that the lands RZL049 is owned by Lorraine Moran and Paul Moran i.e. the children of the appellants.
- The appellants states that the lands should be excluded from the RZLT due to the restricted access available to the lands.
- RZL048 is accessible via one entrance point from the Pontoon Road, this is via the driveway of the residence of Thomas and Kathleen Moran. This is a narrow entrance running alongside mature beautifully maintained gardens of the occupiers.
- RZL049 is further restricted by access, given that access is only available via the same entrance above and then via the lands Ref: RZL048.
- Given the immediacy of the proximity of the mature residence and gardens of the property owned by Thomas and Kathleen Moran that the development potential of such lands is extremely limited and as such is only suitable should the children of Thomas and Kathleen Mora (i.e. Eimear, Lorraine and Paul

Moran) wish to build their own private dwelling houses on lands RZL048 or RZL049 in the future.

- The appellants do not wish to have their lands rezoned for agricultural purposes.
- The appellant also states that there were no notifications received in respect of the RZLT process.
- The appellant missed the appeal submission deadline from Mayo County Council following the additional information request due to obtaining professional and legal advice on the matter and personal circumstances.
- In addition, the appellant states that the turnaround time for additional information was too tight to meet the deadline.

6.2. No additional report was received from Mayo County Council following the appeal. The local authority in their response to the appeal submitted details of the determination issued by the local authority for the lands included on the RZLT Supplemental Map.

7.0 **Assessment**

- 7.1. It should be noted that the lands subject to this appeal are the lands identified by Parcel ID: MOLA00003398 – MCC, Ref: RZL 048 of the RZLT Supplementary Map, in the ownership of Thomas, Kathleen and Eimear Moran.
- 7.2. A subsequent appeal has been lodged on the same land Parcel ID MOLA00003398 – MCC, Ref: RZL 049 of the RZLT Supplementary Map, lands to the east-southeast, in the ownership of Lorraine and Paul Moran (children of the appellants).
- 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. It is noted that subject site is zoned “Objective B New Residential Medium Density”, as per the Castlebar Town and Environs Development Plan, 2008-2014. However, the zoning objectives of this local area plan continue to be implemented as per the Mayo County Development Plan 2022 – 2028. As such, the subject site is zoned for residential.

- 7.4. Following the additional information request from the local authority, the appellant as part of the appeal has clarified the ownership of both lands RLZ048 and RLZ049, which are all within the same family ownership.
- 7.5. Notwithstanding the above, I refer to Section 3.2.3 of the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022, which states *“Matters which are unrelated to the criteria identified in section 653B such as planning permission, commencement on land in-scope, finance, or personal circumstances are not matters to be taken into account during consideration of submissions. Furthermore, the size of the landholding, ownership of the land by private, public or semi-state bodies, lack of knowledge of ownership or transfer of ownership should not be considered.”*
- 7.6. A number of the grounds of appeal, including issues relating to ownership, circumstances leading to delays in responding to the local authority, the use of the land for residential development for the immediate family, and expressed opposition and frustration to the process and the tax are not matters which fall within the criteria for exclusion from the map as per Section 653B of the Taxes Consolidation Act, 1997, as amended, and as such cannot be considered in the appeal process.
- 7.7. The appellant states that they do not wish to have their lands rezoned for agricultural purposes as part of the appeal. It is noted that the local authority advised that any request for zoning change to remove the lands from scope is subject to the outcome on adoption of the new Castlebar Town and Environs LAP, later this year or by variation process for the plan. However, the Board is restricted in its determination of the appeal to the criteria set out in Section 653B of the Taxes Consolidation Act, 1997, as amended. As such, any rezoning of lands does not fall within the said criteria.
- 7.8. The appellant states that access to the site is restricted and the site is accessible via one entrance point from the Pontoon Road, via the driveway of the residence of Thomas and Kathleen Moran.
- 7.9. The Council in their determination have stated, as a matter of fact, that based on the information included in the submission that there are two accesses within the curtilage of the private dwelling (indicated in the appeal as in the ownership of

Thomas and Kathleen Moran), once of which appear to be a private road/laneway with direct access from Pontoon Road to the indicated lands.

- 7.10. Notwithstanding the above and having regard to the clarification provided by the appellant in relation to the overall landholding, it is reasonable to consider that the subject lands may have access to the public road via the existing entrance/site fronting Pontoon Road, which is in the appellants ownership, and/or via the private/road/laneway which directly adjoins Pontoon Road (subject to ownership), as per Section 653B(b) of the Taxes Consolidation Act, 1997, as amended.
- 7.11. It is also reasonable to consider that the site has a footpath network, and public lighting along Pontoon Road, water network/capacity infrastructure via the main public road, wastewater connection via the foul sewer located along the private road/laneway from Pontoon Road and along the entire western boundary of the indicated site, and surface water connections, via the surface water sewer located along the private road/laneway from Pontoon Road and along the entire western boundary of the indicated site.
- 7.12. In this regard, I consider that the site is suitably zoned and serviced to allow for residential dwellings as per Section 653B of the Taxes Consolidation Act 1997, as amended, and therefore, the site can be considered in scope for the RZLT Supplemental Map.

8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as RZL 048 on the RZLT Supplemental Map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that the lands have restricted access and the development potential of such lands is extremely limited. The timeframe and RZLT process was also unfair on landowners and the lands should do not qualify for inclusion on the map.

9.2. 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 the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022. The lands as identified RZL 048 are considered in scope of Section 653B of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Emma Nevin
Planning Inspector

16th October 2023