



An
Bord
Pleanála

Inspector's Report ABP-320341-24

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

Lands at Moss Road, Carndonagh, Co. Donegal.

Local Authority

Donegal County Council

Planning Authority Reg. Ref.

DNCC-C44-18

Appellant

Seamus Doherty

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as Lands at Moss Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18) are located to the northwest of Carndonagh village centre, on the eastern side of Moss Road. The lands are in agricultural use and accommodate a farmyard and associated buildings. Buildings on the site include those used for housing livestock.

2.0 Zoning and Other Provisions

The relevant plan is the Seven Strategic Towns Local Area Plan 2018-2024 (the LAP), as amended. At the Council meeting 24 July 2023 the members of Donegal County Council resolved to extend the duration of this LAP by 2 years.

Under the LAP, the subject site (comprising Parcel ID DNCC-C44-18) is zoned Opp5 – Opportunity Site. As per Section 8.6 ‘Opportunity Sites’ development at Opportunity Site 5 is subject to the provision of an Inner Relief Road, which runs from east to west across Opp5. Policy CN-IS-1 requires that any development proposal within Opportunity Site 5 must include part of the Carndonagh Relief Road. The subject site is located to the south of the Indicative Route of Relief Road as shown in Map 5 ‘Land Use Zoning Map for Carndonagh’ of the LAP.

Opp5 has a stated area of 9.3 ha, which is to accommodate residential and/or appropriate commercial/tourism related development. Under Policy CN-OPP-5, a maximum of 2.5 ha of Opp5 is designated for primarily residential development. Table 8.1 ‘Total Lands Identified to Meet Residential Housing Need in Carndonagh’ of Section 8.7 ‘Housing’, similarly identifies an area of 2.5 ha within Opp5 for the delivery of housing. The exact location of the residential area is not mapped in the LAP however, Section 8.6 describes that residential development will be provided to the south of the Inner Relief Road.

As per Figure 8.6 ‘Carndonagh (Tirnaleague) Source Protection Zones’, the subject site is within the Outer Source Protection Area of the Carndonagh Groundwater Protection Scheme. It is stated in Section 8.9.2 that any development within the Source Protection Areas should not pose carry any significant risk of pollution and should not compromise the water quality. In this regard, Policy CN-EH-1 does not

permit the provision of new individual wastewater treatment systems in the Source Protection Zones. Policy CN-EH-3 requires the submitted of hydrogeological studies with any development proposals in the Source Protection Zones. With reference to Figures 8.5 and 8.6 of the LAP, as amended, the site does not occur within designated Flood Zones A or B.

Relevant Policies and Objectives Include the Following:

Policy CN-OPP-5: It is a policy of the Council to consider proposals for residential development (over a maximum area of 2.5 hectares), commercial development or tourism related development on Opportunity Site 5; 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 proposals for development on this site must include proposals for the provision of an Inner Relief Road in accordance with Policy CN-IS-1 and shall include provisions for pedestrian connectivity to the town centre. 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.

Policy CN-IS-1: It is a policy of the Council that any development proposals on Opportunity Site 5 must include proposals for the construction of that part of the Carndonagh inner relief road that passes through the Opportunity Site (see Map 5). The inner relief road shall be designed and constructed in strict accordance with the specifications provided by the Roads Department of Donegal County Council and the extent of road to be constructed shall be determined commensurate with the scale and nature of the proposed development

3.0 Planning History

PA Ref. DNCC-C3-DCC-91, ABP Ref. VY05E.317008: On 23 August 2023 the Board issued a split decision in respect of the Local Authority determination. The decision was made to include in the RZLT map 2.5 ha at Opportunity Site 5, having regard to Policy CN-OPP-5 of the LAP. The remainder of the site was excluded from the RZLT map.

4.0 Submission to the Local Authority

The appellant made a submission to the local authority seeking to have their land removed from the final map on the basis that the subject site currently contains an active farmyard and buildings, which form part of a wider agricultural landholding. It is stated that the provision of housing in close proximity to the farmyard would cause friction between land uses on the basis of noise and odours arising from the farm. The submission outlines that insufficient space is allocated for the movement of animals and machinery from the farmyard in the west of the overall landholding and the agricultural lands to the east. It is stated that the inclusion of the subject site is not in-keeping with the spirit of the Tax. The submission requests that the existing farmyard and residential buildings are removed from the map.

5.0 Determination by the Local Authority

The local authority determination dated 21 June 2024 states the following:

That the lands are determined as being in scope and therefore that they remain on the Donegal County Council RZLT Map.

Reasons:

1. The property is within an area zoned as 'Opportunity Site 5' in the Seven Strategic Towns Local Area Plan, 2018-2024, which zoning supports the principle of residential development on the subject site,
2. The site is proximate to public services including the public road, water and wastewater networks.
3. Section 3.1.2 of the RZLT Guidelines provides that: 'Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates'.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The RZLT map published February 2024 does not reflect the Board's decision under ABP Ref. 317008-23 to include only 2.5 ha to the south of the Indicative Route Relief Road in the RZLT map.
- Plans made on the back of the previous RZLT map are now obsolete. The landowner should have been informed of this significant change.
- The new RZLT map includes part of the farm that currently accommodates a slatted housing for cattle and sheep, a cattle crush and other handling facilities, and a machinery and fodder storage area.
- The farmyard and buildings are necessary for the housing and handling of animals and for farm inspections, as required by the Department of Agriculture and Marine.
- The active farmyard and buildings would need to be demolished and replaced elsewhere on the farm to accommodate residential development at the site, which would incur considerable expense.
- Development of the subject site would land-lock the eastern portion of the farm, making the existing farming business untenable.
- The inclusion of another area in the farm in the RZLT map would provide a blank canvas for development and would enable the ongoing operation of the farm.

7.0 Assessment

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the Act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that:

"in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in

article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only”.

The PA assessment outlines that the subject site is zoned Opportunity Site 5 of the LAP, which supports the principle of residential development. This is a mixed use zoning, with reference to Section 653B(a)(ii) of the Taxes Consolidation Act 1997

I consider that there is a lack of clarity in the LAP regarding the location of residential development at OPP5. The LAP does not contain a list or matrix of development types that would be permissible in principle, open for consideration or not permitted at Opp5. Section 8.6 of the LAP states that 2.5 ha of residential development would be considered on lands to the south of the Indicative Route of Relief Road. The lands zoned OPP5 that occur to the south of the indicative location of the Inner Relief Road is significantly larger than 2.5 ha. In this way, it is not possible to determine with any surety which part of this southern area is considered appropriate for residential development.

The wording of Policy CN-OPP-5 states only that residential development would be considered at OPP5. Page 10 of the RZLT Guidelines states that “*Where residential is not ‘permitted in principle’ on a land use zoning matrix, such zonings should not be included*”. In the absence of the zoning matrix, it is not clear from the LAP whether residential development is ‘permitted in principle’ or ‘open for consideration’ at the subject site. On the basis that Policy CN-OPP-5 states that the Council will ‘consider’ residential development, it is my opinion that residential development may only be open for consideration on OPP5, rather than permissible in principle.

Owing to the lack of clarity in respect of the location of future residential development at OPP5 and the ambiguity in the status of residential development under the LAP and Policy CN-OPP-5, I do not consider that the subject site meets the criteria under Section 653B(a)(ii) of the Taxes Consolidation Act 1997. I understand that this conclusion is different from that determined by the Board under ABP Ref. VY05E.317008, however, on further inspection of the LAP I consider it reasonable to exclude the subject site as outlined above.

Surface and potable water infrastructure is provided at the Public Road and the wastewater network extends to the immediate south of the site. The PA conclude that the land is in-scope on the basis that a connection to the public road, and the services

therein, can be provided without the need for Third Party consents.

Moss Road is the closest public road to the subject site and is located circa 85 metres to the west of the site. There is an existing access from Moss Road to the wider landholding, of which the subject site forms part. This section of Moss Road has footpaths and public lighting. Page 24 of the Residential Zoned Land Tax - Guidelines for Planning Authority, June 2022 (RZLT Guidelines) states that lands may be in-scope where the works to connect to public services occur on lands that are available to the PA or the landowner. On the basis that there is an existing entrance onto Moss Road from the overall landholding, and that no Third Party consent is required to access the road, it is reasonable to consider that the site can connect to public infrastructure.

The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 2 September 2024) indicates that there is potential spare capacity in the Carndonagh/Malin WWTP. There are no projects planned or underway in respect of this WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 2 September 2024) illustrates that there is potential capacity available at the Inishowen West & Carndonagh & Culdaff Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. I consider that based on this information, it is reasonable to consider that there is access to can be facilitated to sewer and water connections on land that is in control the landowner and that sufficient capacity exists to serve development. On this basis, the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended

The subject site is located in the Outer Source Protection Area of the Carndonagh Groundwater Protection Scheme. This designation does not prevent residential development that would connect to public water infrastructure, subject to standard water quality protection measures. There are no other physical conditions that would preclude the provision of dwellings at the site.

8.0 Recommendation

Having regard to the foregoing I consider that the lands identified as Lands at Moss

Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18) do not meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended for the following reasons.

- The lands are zoned for a mixture of uses and it is unclear from the LAP which 2.5 ha of OPP5 may potentially accommodate residential development and whether residential development is permissible at the subject site.

9.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Lands at Moss Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18) located on lands zoned Opp5 – Opportunity Site 5 are considered out of scope of section 653B(a)(ii) on the basis that it is unclear from the LAP whether residential development is permissible at the subject site.

The lands are located at the urban fringe of Cardonagh, and there is evidence from UE that there is capacity in existing public infrastructure to serve the lands. No Third-Party consents would be required to provide access to Moss Road, located circa 85 metres to the west of the site.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Donegal County Council

Local Authority Reference Number: DNCC-C44-18

Appeal by Seamus Doherty in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Donegal County Council on the 21 day of June 2024 in respect of the site described below.

Lands at: Lands at Moss Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18)

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board set aside the determination of the local authority and allow the appeal in relation to the lands identified as Lands at Moss Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18).

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Lands at Moss Cottage, Moss Road, Carndonagh, Co. Donegal (Parcel ID DNCC-C44-18) located on lands zoned Opp5 – Opportunity Site 5 are considered out of scope of section 653B(a)(ii) on the basis that it is unclear from the LAP whether residential development is permissible at the subject site.

The lands are located at the urban fringe of Cardonagh, and there is evidence from UE that there is capacity in existing public infrastructure to serve the lands. No Third-Party consents would be required to provide access to Moss Road, located circa 85 metres to the west of the site.

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.

Sinead O'Connor

Planning Inspector

Date: 02 September 2024