



An
Bord
Pleanála

Inspector's Report

ABP-320449-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Lands at Old Ballinfoyle, Headford Road, Galway.

Local Authority

Galway City Council

Planning Authority Reg. Ref.

GLWC-C15-RZLT-2

Appellant

William Francis

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as lands at Old Ballinfoyle, Headford Road, Galway (Parcel ID GCLA00001503, GCLA00001473 and GLCA00001474) are located north of Galway City on both sides of the Headford Road (N84). The lands comprise 3 no. parcels, as per the map accompanying the local authority (LA) determination dated 28 June 2024. For the purposes of this assessment, I will use the following naming convention:

- Site 1: (part of Parcel ID GCLA00001503) Lands to the west of the Headford Road. This site is under grass and adjoins agricultural lands to the north. The site adjoins a neighbourhood centre to the south, and incomplete sections of the Tornóg residential development to the west. The site is separated from the Headford Road to the east by a strip of lands that appear to comprise a vegetated embankment.
- Site 2: (part of Parcel ID GCLA00001473) Lands on the eastern side of the Headford Road. This site is largely under scrub vegetation. This site immediately adjoins the Baile An Chóiste residential development to the north, and a commercial building and agricultural lands to the south. To the west the site adjoins the Headford Road and to the east the site adjoins agricultural lands.
- Site 3: (part of Parcel ID GCLA00001474) Lands to the rear of the properties fronting Headford Road. This site is under grass and appears to accommodate residential and agricultural buildings at its eastern boundary. The site adjoins agricultural lands to the north, south and east. To the west the site adjoins the commercial premises and residential dwellings fronting the Headford Road.

2.0 Zoning and Other Provisions

The relevant plan is the Galway City Development Plan 2023-2029.

- The lands are zoned R-Residential: To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.
- Under Section 11.2.8 of the Plan, Residential is compatible with the R-Residential zoning objective.

- The southeast section of Site 2 and the northern section of Site 1 are within a mapped RA Greenway.
- Section 5.7.1 of the Plan states that the greenways shown in the Development Plan maps are indicative only.

3.0 Planning History

There is no recent or relevant planning history associated with the subject site.

The lands to the immediate southwest of Site 1 are the subject of a current planning application under PA Ref. 2460173 for residential development. The proposed development comprises 10 no. residential units located within the existing loop in the road. This area was previously granted planning permission for development under PA Ref. 06/58, 19/42 and 23/62.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis that the landowner does not have the capabilities to make decisions in respect of his property, the lands had been in active agricultural use until the landowner was admitted to a nursing home, the lands do not have access to services or infrastructure, it is reasonable that the lands are vacant or idle owing to the landowners age and capabilities, and the RZLT map includes the dwelling and garden that are subject to Local Property Tax.

5.0 Determination by the Local Authority

The local authority determined that:

Having evaluated the submission, it is consider that the land parcel (Parcel ID GCLA00001503, GCLA00001473, GLCA00001474) at Ballinfoyle, Headford Road, does constitute land satisfying the criteria as per Section 653B of the Taxes Consolidation Act 1997 (as amended), therefore it is recommended that this land should be included in the final map for the following reasons:

Reasons:

The land meets the criteria set out in Section 653B of the Tax Consolidation Act 1997 (as amended), in that it has reasonable access to public infrastructure and facilities necessary for dwellings to be developed and with sufficient service capacity available for such development and is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

Existing residential dwellings and their gardens which are subject to Local Property Tax, although included in the residential zoned land tax maps, will not be liable to RZLT.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The Director of Services of Galway City Council was not authorised to make the RZLT determination.
- No justification given for concluding that the site can connect to services and infrastructure.
- No supporting documentation from Uisce Eireann or the National Roads Authority is provided to illustrate that the site can connect to services and infrastructure.
- No justification is given for the conclusion that there are no physical constraints to development at the site.
- Given the age and capabilities of the appellant, it is reasonable that the land is vacant and idle.
- The LA has violated the constitutional rights of the appellant.

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 appeal submission has raised grounds that are outside of the scope of the Boards assessment, including the authority of the person who made the RZLT determination or the physical capacity of a person to undertaken development. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing the legal instruments under which the LA made their determination or in determining the physical capacity of the landowner to provide residential development.

The lands are zoned R-Residential and, therefore, meet the criteria under Section 653B(a) of the Act.

The appeal statement outlines that the LA failed to provide any justification for their determination that the lands have reasonable access to infrastructure and services. Site 1 is located in close proximity to the Headford Road and immediately adjoins existing and proposed residential and commercial development at the Tornóg scheme. There is an existing residential road adjoining the site, therefore, it is reasonable to consider that the site can access roads and services from this location. Site 2 immediately adjoins the Baile An Chóiste residential scheme to the north and there are 2 no. cul de sacs from this development that immediately adjoin the northern boundary of the site. Given the proximity of these roads, it is reasonable to consider that the site can connect to roads and services through this existing development. Site 3 contains a residential dwelling and shed that are currently accessed from Headford Road. On the basis of this existing connection, it is reasonable to consider that the site can connect to roads and services at Headford Road. Page 23 of the RZTL guidelines states: *“where the infrastructure is located adjoining, intersecting, at a boundary or*

corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be ‘connected’ or ‘able to connect’ and therefore are in-scope”. Owing to the proximity of the sites to existing residential development and the Headford Road, it is reasonable to consider that a connection to roads and water infrastructure can be provided.

The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 18 September 2024) indicates that there is Spare Capacity Available at the Mutton Island WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 18 September 2024) indicates that there is Capacity Available at the Lough Corrib (Galway City, Tuam, Loughrea) 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. Drawing from the above, it is reasonable to consider that there is capacity in the water network to serve the lands. In light of the foregoing, I consider that the sites meet the criteria for inclusion under Section 653B(b) of the Act.

The appeal statement outlines that the LA failed to justify their determination that there are no physical constraints to development at the site. Section 653B(c) of the Act facilitates the exclusion of lands that are precluded from providing residential development. This part of the Act specifically refers to contaminated lands and known archaeological and historical features. Pages 9 and 10 of the RZLT Guidelines indicate that contaminated lands include those areas licenced under Section 22 of the Waste Management Act and lands where the landowner can produce evidence of contamination. The appellant has not submitted any documentation or evidence to illustrate that the lands are contaminated to an extent that would preclude the provision of dwellings. In this way, it is reasonable to assume that the lands are not precluded from development due to contamination. The subject lands do not contain any buildings included on the record of Protected Structures or National Inventory of Architectural Heritage, or any structures included in the Sites and Monuments Records. In this way, it is reasonable to consider that there are no known archaeological or historical remains that would preclude development. Part of Sites 2 and 3 are subject to a mapped objective to provide an RA Greenway. As per Section 5.7.1 of the Plan, these routes are indicative only. In this way, and with reference to

the residential land use zoning attributed to the lands, I do not consider that this objective precludes the provision of dwellings at the site. In light of the foregoing, I consider that the sites meet the criteria for inclusion on the RZLT map under Section 653B(c) of the Act.

The appellant states that the lands are vacant and idle as the appellant is living in a nursing home. Prior to this, the lands were in active agricultural use and the appellant was a full time farmer. As per Section 653B(i), where a site is zoned primarily for residential use it is only excluded from the RZLT map where the trade or profession being undertaken at the site is subject to commercial rates. I note that page 11 of the Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022 (RZLT Guidelines) states that *"Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates"*. As agriculture is not subject to commercial rates, I do not consider that the site meets the criteria for exclusion under Section 653B(i) of the Taxes Consolidation Act 1997, as amended (the Act).

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as lands at Old Ballinfoyle, Headford Road, Galway (Parcel ID GCLA00001503, GCLA00001473 and GLCA00001474) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final map. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT map.

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 Old Ballinfoyle, Headford Road, Galway (Parcel ID GCLA00001503, GCLA00001473 and GLCA00001474) are located on lands zoned R-Residential and are, therefore, considered in scope of section 653B(a). The sites are each located adjoining existing residential development in proximity to the Headford Road therefore, it is reasonable to consider that the sites are able to connect to roads and services. The UE capacity registers, accessed 18 September 2024, indicate that there is capacity available in the water and wastewater networks to serve the site. In this way, the sites meet the criteria under Section 653B(b) of the Act. The appellant has not produced any evidence to indicate that the lands are preclude from providing dwellings due to contamination. The sites do not contain any buildings included on the record of Protected Structures or National Inventory of Architectural Heritage, or any structures included in the Sites and Monuments Records, therefore, the sites meet the criteria under Section 653B(c) of the Act. On the basis that agriculture is not subject to commercial rates, the sites do not meet the criteria for exclusion under Section 653B(i) of the Act. No other reasons within the scope of Section 653B of the Act have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Galway City Council

Local Authority Reference Number: GLWC-C15-RZLT-2

Appeal by William Francis care of Yvonne Francis & Anne Marie Salmon 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 Galway City Council on the 28 day of June 2024 in respect of the site described below.

Lands at: lands at Old Ballinfoyle, Headford Road, Galway

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 confirm the determination of the local authority and direct the local authority to retain the lands identified as lands at Old Ballinfoyle, Headford Road, Galway (Parcel ID GCLA00001503, GCLA00001473 and GLCA00001474) on the final map.

Reasons and Considerations

The lands identified as lands at Old Ballinfoyle, Headford Road, Galway (Parcel ID GCLA00001503, GCLA00001473 and GLCA00001474) are located on lands zoned R-Residential and are, therefore, considered in scope of section 653B(a). The sites are each located adjoining existing residential development in proximity to the Headford Road therefore, it is reasonable to consider that the sites are able to connect to roads and services. The UE capacity registers, accessed 18 September 2024, indicate that there is capacity available in the water and wastewater networks to serve the site. In this way, the sites meet the criteria under Section 653B(b) of the Act. The appellant has not produced any evidence to indicate that the lands are preclude from providing dwellings due to contamination. The sites do not contain any buildings included on the record of Protected Structures or National Inventory of Architectural Heritage, or any structures included in the Sites and Monuments Records, therefore, the sites meet the criteria under Section 653B(c) of the Act. On the basis that agriculture is not subject to commercial rates, the sites do not meet the criteria for exclusion under Section 653B(i) of the Act. No other reasons within the scope of Section 653B of the Act have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the residential zoning objective that applies to these lands.

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.

Sinéad O'Connor

Planning Inspector

Date: 26 September 2024