



An  
Bord  
Pleanála

## Inspector's Report ABP-316275-23.

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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 Dereen, St. Margaret's Road, Killarney, Co. Kerry.

**Local Authority**

Kerry County Council.

**Local Authority Reg. Ref.**

KE-C6-RZLT-3.

**Appellant**

Sean Lyne.

**Inspector**

Dáire McDevitt

## **1.0 Site Description**

The appeal lands identified as KE-C6-RZLT-3 with a stated area of c. 1.6 hectares are located at Dereen, St. Margaret's Road in Killarney, Co. Kerry.

## **2.0 Zoning**

Volume 2 of the Kerry County Development Plan 2022-2028 contains the Killarney Town Development Plan.

Section 1.8.1 sets out that the Tralee, Killarney, and Listowel Town Development Plans 2009-2015 (as extended and varied) are being incorporated into this plan and they are contained in Volume 2. This CDP is the first consolidated County Development Plan for the entire County of Kerry, (including the former Town Council areas of Tralee, Killarney, and Listowel). The County Plan includes updated land use and zoning frameworks in respect of the towns of Tralee, Killarney and Listowel and consolidates their associated written texts. This plan will set out the policies and objectives for the future development of the towns of Tralee, Killarney, and Listowel, including compliance with the core strategy for the County.

As per Table 3.7, the Zoned Land Required, has been determined based on the Settlement Capacity Audit contained in Volume 2 for these settlements. It is proposed to phase residential lands in Tralee and Killarney in order to meet the housing targets of these settlements allowing for the contribution of brownfield/ infill sites and to reflect the tiered approach to zoning.

Killarney is identified as a key town in the Southwest RSES (Regional Social Economic Strategy)

The lands are zoned R1 New/Proposed Residential which are identified as K-5 and tier 1 (serviced zoned lands) in the Settlement Capacity Audit.

## **3.0 Planning History**

PA Ref. 19/472 refers to a grant of permission to demolished building and site works at Derreen, Killarney.

PA Ref. 19/497 refers to a grant of permission for a two storey dwelling at Derreen.

#### **4.0 Submission to the Local Authority**

The appellant made a submission to the local authority seeking that his site be excluded on the basis that he farms the land and it also contains his family home.

#### **5.0 Determination by the Local Authority**

The local authority determined that the site fulfils the qualifying criteria to be included in the Final Map for the Residential Zoned Land Tax or the following reason:

1. The land in question is included in a development plan and is zoned for residential development, 2. the land is serviced, or is reasonable to consider may have access to services and 3. the land is not affected in terms of physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains and 4. as provided by the guidelines, existing permanently occupied residential dwellings are to be indicated on the maps were located in a residentially zoned area but such homes will not be in scope of the tax and owners of such properties will not be liable for this tax.

#### **6.0 The Appeal**

##### **6.1 Grounds of Appeal**

The grounds of appeal are summarised as follows:

- The lands include the appellants private residence/family home.
- The appellant is a farmer and the lands are used as part of his farming enterprise.

##### **7.0 Local Authority Submission**

- All of the planning issues relating to the submission are dealt with in the planner's report.

- The content of the appeal does not raise any additional points that are required to be addressed by the planning authority.

## 8.0 Assessment

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion in the map, and states that the first consideration for inclusion in the map is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential. The appeal lands are zoned residential and therefore considered in scope for the RZLT.

Page 4 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets out that *'a number of exemptions are also set out within the provision, and while existing permanently -occupied residential dwellings will be indicated on the maps where located within a residential zoning, homes are not within the scope of the tax and the owners of such properties will not be liable for this tax.'*

Section 3.1.1 of the guidelines includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that *"Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however home owners of residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation).*

Under section 653J 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. The legislation does not give the board a role in determining whether a site is a 'relevant site' by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT. 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 the restrictions to considering criteria for inclusion. This states 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”.*

Whether the site complies section 653O or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

With regard to the use of the lands for agricultural purposes. As noted in the 2022 RZLT Guidelines the use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates. Based on the information available I have no evidence that this is the case. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and the grounds of appeal relating to this matter should be dismissed.

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-3 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended.

## **8.0 Conclusion & Recommendation**

The lands identified as KE-C6-RZLT-3 are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The lands are accessible and there is no reason why they cannot be developed in principle in accordance with the residential zoning objective that applies to these lands. I consider that the lands identified as KE-C6-RZLT-3 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map. And I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as KE-C6-RZLT-3 on the map.

## 9.0 Reasons and Considerations

The lands identified as KE-C6-RZLT-3 are located within an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands in principle for residential purposes. The use of land for agricultural purposes is not a criteria for exclusion under section 653B(c)(i). The lands meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

*I confirm that the report represents my professional 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.*

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Dáire McDevitt  
Senior Planning Inspector  
17<sup>th</sup> July 2023