



An  
Bord  
Pleanála

## Inspector's Report ABP-316378-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Lands at Mounthawk & Caherslee, Tralee Co. Kerry.
<b>Local Authority</b>	Kerry County Council.
<b>Local Authority Reg. Ref.</b>	KE-C6-RZLT-14.
<b>Appellant</b>	Ruden Homes Ltd.
<b>Inspector</b>	Dáire McDevitt.

## 1.0 Site Description

The lands identified as KE-C6-RZLT-14 (land parcel ID KY0000001490) are located at Mounthawk & Caherslee in Tralee, Co. Kerry.

## 2.0 Zoning

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

Zoning Maps for Tralee, Killarney & Listowel are included in Volume 2 of the Kerry County Development Plan 2022-2028. 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.

Tralee is identified as a large scale 'key town' in the RSES. The lands are zoned R1 are identified as T-3 (Tier 2 serviceable zoned lands) in the Tier Phasing Map for Tralee which shows Tier 1 and Tier 2 lands in Tralee as part to the Settlement Capacity Audit.

Tier 2 'serviceable zoned lands':

- This zoning comprises lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan i.e. the lands are currently constrained due to the need to deliver some or all development services required to support new development, i.e. road or footpath access including lighting, foul sewer drainage, surface water drainage, water supply and/or additional service capacity.

- These lands may be positioned within the existing built-up footprint of a settlement, or contiguous to existing developed lands or to tier 1 zoned lands, where required to fulfil the spatially sequential approach to the location of the new development within the identified settlement.
- The potential for delivery of the required services and/or capacity to support new development must be identified and specific details provided by the planning authority at the time of publication of both the draft and final development or area plan.

Tralee Land Use Zoning Map A also has an indicative road shown running along the northern boundary of the appeal lands.

### **3.0 Planning History**

PA Ref. 14/397502 refers to an EOD of PA Ref. 7502/119/07 (ABP Ref. PL.81.227107) for construction of 53 no. dwelling houses and 40 no. serviced sites, creche, entrance, roads and provision for the future works to accommodate 291 no. dwelling houses, 34 no. serviced sites and neighbourhood centre.

PA Ref. 13/397502 refers to a decision to refuse permission for EOD of 10 year permission as per above.

PA Ref. 07/307502 refers to a grant of a permission (10 years) as per above.

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

The appellants made a submission to the local authority seeking that their land be excluded on the basis that significant upgrade works are required to the existing combined sewer network in order to facilitate connectivity for new residential units on the site. A public link road is required throughout the landholding to connect third party lands and feed in with the sewer infrastructure network planned for Tralee. The submission states to connect development on the zoned land to the nearest sewer would require significant capital investment. The objective to deliver connectivity along with the required services infrastructure to facilitate the proposed new residential zoning in the southern section of the site will place significant costs on the landowner.

## **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.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The grounds of appeal are summarised as follows:

- The decision taken by KCC did not provide a satisfactory infrastructural assessment of the appellant's land as required under section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022).

- It is unlikely that Irish Water (IW) will be in a position to allow connection to the nearest combined sewer due to IW standards. The site therefore does not have immediate access to the necessary IW infrastructure and will require significant material works and investment on the part of the appellant to ensure the site is fully serviced.
- There is a zoning requirement to provide an indicative road throughout the appellant's landholding which will require significant third party involvement.

## **7.0 Local Authority Submission**

The local authority submitted an extensive submission. Points of note include.

- UE confirm that there are watermains and a foul sewer on the road that adjoins the site. The town of Tralee has capacity in terms of its water supply and wastewater treatment systems, The planning authority is therefore satisfied that services are available in relation to this site.
- The lands have direct access onto the Caherslee Road as such the site meets the servicing criteria as they can be accessed directly.
- The proposed access road referred to in the submission runs adjacent to the northern boundary of the site on lands that are zoned for agriculture. The indicative road on the zoning map does not go through residential zoned lands. There is no objective in the Tralee Plan that states the development of these lands is dependent on the provision of a specific infrastructure. KCC do not consider that the development of these lands are reliant on the development of this indicative road.

## **8.0 Assessment**

The grounds of appeal have raised issues regarding compliance with section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022).

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 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”.

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 (i) solely or primarily for residential use,(ii) or for a mixture of uses including residential. The appeal lands are zoned residential therefore are within scope of section 653B(a).

Kerry County Development Plan 2022-2028 sets out a tiered approach to residential land use zoning (Tier 1 and Tier 2). The appeal lands are identified as T-3 in the Settlement Capacity Audit for Tralee and designated as Tier 2 Serviceable Zoned land. Page 26 of the RZLT Guidelines states that ‘furthermore Settlement Capacity Audits undertaken as part of the development plan review process will provide succinct information on capacity and confirmation of servicing. Tier 2 lands in the current Kerry County Development Plan refer to lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan. The wording contained in the Plan does not preclude residential development within the lifetime of the plan. I am satisfied that the lands comply with section 653B(a) as I consider that the lands, zoned residential, may be available in principle for residential development during the lifetime of the current Local Area Plan if certain criteria are met and as such are within scope.

The appellant has submitted that the lands do not have immediate access to the necessary UE infrastructure and would require significant material works and investment on the part of the appellant to ensure the site is fully serviced. Whilst infrastructure elements may not be in place at present, these would be expected to be provided in conjunction with the development of a site, generally developer led.

The provision of infrastructure to the subject lands are considered to be in the control of Kerry County Council or Uisce Eireann (see submission on file confirming connections available) and the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. In my opinion it is reasonable to consider that the provision of access, footpaths, public lighting, surface water drainage, sewer and water connections may be provided where land is in the control of the landowner or local authority. On this basis the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and the grounds of appeal relating to this matter should be dismissed. No capacity issues were identified. Based on the information available I have no evidence that this is the case. I am of the view that is reasonable to conclude that the site may have access to public infrastructure and utilities, including roads and footpaths as such complies with criteria for inclusion under section 653B(b) and the grounds of appeal should be dismissed.

With regard to the indicative road shown along the northern boundary of the appeal lands. I note that while this is shown within the appellant's overall landholding it is outside the land which is the subject of this report. Furthermore the design and location of which has not been formalized or agreed. The appellant has argued that in the absence of such an agreement it is not possible to development these lands. I consider the presence of an indicative road to the north does not preclude residential development on the lands. Any proposal that would need to have regard to any indicative road corridor and incorporate proposals into a site layout if relevant to that proposal. This matter would be the subject of relevant agreements and consents and assessed by the planning authority through the development management process. The presence of a proposed or indicative corridor for a road is not included in the criteria for exclusion under section 653B and therefore the lands remain in scope and the grounds of appeal relating to this matter dismissed.

Having regard to the foregoing I consider that the lands zoned residential identified as land parcel ID KY0000001490 under KE-C6-RZLT-14 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.

## **9.0 Conclusion & Recommendation**

The lands identified as parcel ID KY0000001490 under KE-C6-RZLT-14 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. This portion of the lands identified as land parcel ID KY0000001490 under KE-C6-RZLT-14 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 land parcel ID KY0000001490 under KE-C6-RZLT-14 on the map.

## **10.0 Reasons and Considerations**

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 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax, the lands identified as land parcel ID KY0000001490 under KE-C6-RZLT-14 should remain on the RZLT map.

The lands are on land zoned residential within an established urban area with services are 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. 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 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.*

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