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Bord  
Pleanála

## Inspector's Report ABP-316454-23.

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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 Rathonane Farm, Tralee Co. Kerry.

**Local Authority**

Kerry County Council.

**Local Authority Reg. Ref.**

KE-C6-RZLT-27.

**Appellant**

Diane Crean.

**Inspector**

Dáire McDevitt.

## **1.0 Site Description**

The lands identified as KE-C6-RZLT-27 (land parcel ID KY0000001492) are located at Rathonane Farm in Tralee, Co. Kerry.

## **2.0 Zoning**

Volume 2 of the Kerry County Development Plan 2022-2028 contains the Tralee Town Development Plan. 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-4 (Tier 1) in the Tier Phasing Map for Tralee which shows Tier 1 and Tier 2 lands in Tralee as part to the Settlement Capacity Audit. Tralee Land Use Zoning Map A also has an indicative road traversing appeal lands.

## **3.0 Planning History**

PA Ref. 12/397526 refers to a decision to refuse permission for EOD of PA Ref. 07/307526

PA Ref. 07/307526 refers to a grant of permission for 126 no. semi-detached houses and 16 no. terraced.

PA Ref. 00/305990 refers to a grant of permission for 37 detached houses, 220 semi-detached houses, 66 no. terraced and 5 block each containing 6 apartments and 6 maisonettes. Permission for site developemtn works including access, roads, footpaths and services.

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

The appellant made a submission to the local authority seeking that her land be excluded on the basis that the lands are subject to an indicative access road including footpath and cycle way which would provide connections from the lands to the Kileen Road. In the absence of this connection the lands do not have the benefit of an appropriate access that will facilitate comprehensive development in a manner that is consistent with national, regional and local planning policy. The existing access from the south is local access only, having design and legal constraints.

## **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 reiterate the issues raised in the submission to the local authority and are summarised as follows:

- The lands are subject to an indicative access road including footpath and cycle way which would provide connections from the lands to the Kileen Road.
- In the absence of this connection the lands do not have the benefit of an appropriate access that will facilitate comprehensive development in a manner that is consistent with national, regional and local planning policy.
- The existing access from the south is local access only, having design and legal constraints.

## **7.0 Local Authority Submission**

Points of note include.

- The most recent application on the lands (07/307526) was to be accessed from the south onto the service road that serve Oakview Village with the start of the access road and junction provided for during the construction of Oakview Village.
- There are a number of additional access points to the lands where the lands bound public roads. As such there are a number of options in terms of how lands area accessed.
- The lands are not dependent on access from the north, however access could be facilitated, if required, via lands in the ownership of KCC.
- The planning authority is satisfied that these land have all services available and that they should remain in scope in terms of the RZLT.

## **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 (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).

The appellant has submitted that the lands do not have access and as such it is not serviced within the meaning of section 653B. The lands are bounded by residential estates with access points/roads are possible in principle to the south and west. The appellant has submitted that she does not have the benefit of a wayleave/right of way to access/service the land from the south. 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 through the appeal lands on the Tralee Land Use Zoning Map A. 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 the road being delivered is not possible to development these lands. The presence of an indicative road 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 KY0000001492 under KE-C6-RZLT-27 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 land parcel ID KY0000001492 under KE-C6-RZLT-27 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 KY0000001492 under KE-C6-RZLT-27 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 KY0000001492 under KE-C6-RZLT-27 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 KY0000001492 under KE-C6-RZLT-27 should remain on the RZLT map.

The lands are 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  
27<sup>th</sup> July 2023