



An
Bord
Pleanála

Inspector's Report ABP-316459-23.

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 Ballycasheen, Killarney, Co. Kerry

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-7.

Appellant

Patrick Cornin and Eugene Cronin.

Inspector

Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-7 with a stated area of c.0.2 hectares are located at Ballycasheen 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.

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.

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

The lands are zoned R1 New/Proposed Residential. The lands are identified as KE 15/16/17 and allocated Tier 2 on the Tier phasing map which shows Tier 1 and Tier 2 lands in Killarney 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.

3.0 Planning History

There is a history of planning applications on the lands for commercial and residential applications. These include inter alia PA Ref. 12/203928 relating to a refusal for 2 no. industrial warehouses and PA Ref. 05/204452 relating to a refusal for a dwelling house.

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 the site is not a serviced site with no electricity, water, sewer, wastewater, footpaths or entrance/exit services available. It is stated that numerous planning applications have been submitted to no avail and they hope the residential zoning can be retained.

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:

- Complex planning history associated with the site with a history of refusals for commercial and residential development.
- There are difficulties with services and the site.
- The site is very close to the N22 in a difficult area.

Summary of letter from Engineer submitted with the appeal relating to infrastructure and public services available to serve the lands:

- The property abuts a public roadway taken in charge by KCC. The roadway is a National Primary route (N22). To obtain access onto the N22 at this location would prove challenging and will be subject to a road safety audit.
- The property is serviced by a public water network, the property is not serviced by Killarney foul sewer network.
- The site contours prohibit the provision of an onsite domestic wwts as the slope of the site exceeds 1 in 8 which is the maximum slope allowable in accordance with the EPA CoP 2021.

7.0 Local Authority Submission

- All of the planning issues relating to the submission are dealt within 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

The grounds of appeal seek to have the land removed from the RZLT map on the basis that the lands are not serviced and access to the site via the N22 would be challenging.

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 R1 and therefore are within scope of section 653B(a). I note that the lands are identified as Tier 2 in the tiered approach to residential zoned lands the County Development Plan, The local authority determined the lands to be in scope. Tier 2 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 as such residential development is not precluded during the lifetime of the plan subject to certain criteria being met. I consider, therefore, the lands are within scope of section 653B(a).

The appellants have submitted (supported by Engineers correspondence included with the appeal) that the lands should be excluded from the map as the property is served by a public water network but not serviced by the Killarney foul sewer network. The local authority determined that the land is serviced, or it is reasonable to consider may have access to services. Correspondence from Uisce Eireann confirms that a water main and sewer existing on the adjoining estate of Whitebridge Manor in close proximity to the site and that the watermain is accessible c.120m away via a road crossing, N22, adjoining the land parcel. And that they have no details as to the ownership of the lands surrounding the land parcel or along the route of the service connection. The appellant has confirmed that the site is served by public water network.

The provision of infrastructure to the subject lands are considered to be in the control of Kerry County Council or Uisce Eireann 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, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

With regard to access to the site via the N22. The planning authority noted that the N22 has a speed limit of 60kph at this point and having regard to the Spatial Planning and National Roads Guidelines and Objective KCDP 14-31 considered the lands in scope.

The lands can be served in principle by the existing road network that is in place and are zoned residential. National guidelines and Objective KCDP 14-31 notes that accesses onto national roads limited access may be considered on transitional zoned. As with all development, the applicant/ developer will be expected to provide for any internal road network necessary to serve the site and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the Local Authority. Therefore I consider that this ground of appeal should be dismissed.

Having regard to the foregoing I consider that the lands zoned residential identified as KE-C6-RZLT-7 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 KE-C6-RZLT-7 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 KE-C6-RZLT-7 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-7 on the map.

10.0 Reasons and Consideration

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 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.

Dáire McDevitt
Senior Planning Inspector
24th July 2023