



An  
Bord  
Pleanála

## Inspector's Report ABP-316486-23.

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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 Bishops Farm, Rockery Road, Ballycasheen, Killarney, Co. Kerry.
<b>Local Authority</b>	Kerry County Council.
<b>Local Authority Reg. Ref.</b>	KE-C6-RZLT-28.
<b>Appellant</b>	Mark O'Leary.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Description**

The appeal lands identified as KE-C6-RZLT-28 with a stated area of c.16 hectares are located at Bishops Farm, Rockery Road in Ballycasheen, Killarney, Co. Kerry. The lands are stated to be c.1km east of the town centre and comprise the appellant's farm.

## **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) and R2 Existing Residential and P1 Agriculture. The lands are identified as K-13 Settlement Capacity Audit.is Tier 2 (Serviceable Zoned Land) in the tiered approach to the zoning of land for residential development.

Indicative road is shown through the western portion of the lands.

### **3.0 Planning History**

None stated.

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

The appellant made a submission to the local authority seeking that his land be excluded on the basis that the lands are identified as being integral to possible transport facility and infrastructure needs and make provision for an indicative public road route. The submission also states there are no continuous footpaths to the north side of Rookery Road accessing these lands.

### **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 where located in a residential 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 decision taken by KCC did not provide a satisfactory infrastructural assessment of the appellants lands as required under section 3.1.1 and 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022).
- The appellants lands are zoned as ‘Tier 2’ residential lands on the 2022 Kerry County Development Plan based on infrastructural deficiencies and cannot therefore be considered to come within scope of the RZLT.
- It is not possible to develop the lands in full without addressing Traffic Capacity issues as identified in the County Development Plan. The provision of the proposed inner relief road to address the issue cannot be determined without the consent of additional landowners of third party lands that adjoin the subject site. It is not possible to incorporate the inner relief road into the lands on a piecemeal fashion as suggested by the Council’s Evaluation Report.

## **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 K-13 in the Settlement Capacity Audit 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 o 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 submits that It is not possible to develop the lands in full without addressing traffic capacity issues as identified in the County Development Plan. The land use zoning map includes an indicative road shown through the western portion of the lands. The appellant submits that the provision of the proposed road to address the issue cannot be determined without the consent of additional landowners of third party lands that adjoin the subject site. It is not possible to incorporate the road into the lands on a piecemeal fashion as suggested by the Council's Evaluation Report.

An indicative road traversing the eastern portion of the appeal lands though the site does shown on the land use zoning map does not preclude residential development on the site. Any proposal would need to have regard to any indicative road corridor and incorporate proposals into a site layout. 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 an indicative 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 should be dismissed.

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.

Having regard to the foregoing I consider that the lands zoned residential identified as KE-C6-RZLT-28 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 located 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. The lands identified as KE-C6-RZLT-28 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 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-28 on the map.

## **10.0 Reasons and Considerations.**

The lands located 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. The lands identified as KE-C6-RZLT-28 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  
18<sup>th</sup> July 2023