



An  
Bord  
Pleanála

## Inspector's Report ABP-316493-23.

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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 Ballyheigue, Tralee, Co. Kerry.

**Local Authority**

Kerry County Council.

**Local Authority Reg. Ref.**

KE-C6-RZLT-6

**Appellant**

Paudie Casey

**Inspector**

Dáire McDevitt

## **1.0 Site Description**

The appeal lands identified as KE-C6-RZLT-6 with a stated area of c.2.4 hectares are located adjacent to Caseys Caravan Park in Ballyheigue in Co. Kerry.

There are concurrent RZLT appeals for adjacent lands under ABP 316519-23 by Anto Casey and ABP 316520 by John Duggan.

## **2.0 Zoning**

The Draft Listowel Municipal District Local Area Plan 2023-2029 pre-draft consultation finished on the 10<sup>th</sup> March 2023. This will replace the Listowel Town Plan which is stated to be contained in Volume 2 of the Kerry County Development Plan 2022-2028 and the Listowel Municipal District LAP 2020-2026.

Volume 2 of the Kerry County Development Plan contains Town Development Plans for Tralee, Killarney and Listowel. This sets out objectives and zonings for the three towns only. There is no reference to the Listowel Municipal District LAP 2020-2028 in this volume. Volume 1 of the Plan notes that in the future suite of Municipal District/ Electoral Area Local Area Plans all residential zoning will take a tiered approach and lands will be subject to a Settlement Capacity Audit.

Having regard to the plans contained in the Volume 2 of the Kerry County Development Plan the current operative plan for Ballyhaigue is the Listowel Municipal District LAP 2020-2028.

Ballyheigue is identified as a district/medium sized town.

The lands are zoned R4 Strategic Residential Reserve in the Listowel Municipal District Local Area Plan 2020-2026.

Section 2.2.3 Long Term Planning notes “*Lands will be zoned as R4 (Strategic Residential Reserve) which indicates future long-term use. The purpose of phasing is to allow for the orderly development of these settlements and to ensure that the physical and social infrastructure required is provided in tandem with the residential development.*”

Residential development on R4, Strategic residential reserve lands will be permitted only on completion of 80% of the R1 new/proposed residential zoned lands subject to the provision of adequate infrastructure. Where no lands have been identified as R1 in a particular settlement, residential development will only be considered on lands zoned M2, M4 or R4 for example subject to consideration of the provision of adequate public water infrastructure and need and demand in the area amongst other issues.

### **3.0 Planning History**

None stated.

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

The appellant made a submission to the Local Authority seeking to have his lands removed from the draft map on the basis the lands are landlocked on 4 sides and that there is an agricultural access only to the lands via lands to the west.

### **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 local area 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 appellant has a right of way/wayleave into the lands though adjacent lands owned by Mr. Anto Casey. This is limited access to agricultural use or limited to personal housing access. It is stated that this does not extend to creating an access for major development of the lands.
- The appellant notes that KCC state they have a submission from the appellant showing the full development of the lands and reference a purchase of a point of entry from Main Street. The appellant denies having any hand, act or part in the commissioning of this proposal. It is also submitted that the appellant has had no involvement in the preparation and submission of this report to KCC.

The submission includes a copy of a submission dated 15<sup>th</sup> December 2022 which is stated to have been sent to KCC outlining that the appellant owns the lands and is letting them out for farming. Folio details included.

The grounds of appeal also include an extract of a submission on the Draft consultation of the Listowel Municipal District LAP 2023-2029.

I draw the Board attention to the fact that a full copy of the submission is on the file and as such forms part of the available documentation. The submission is not dated but received by KCC on the 24<sup>th</sup> February 2023 (copy of lodgement on file) and stated to be on behalf of Paudie Casey (landowner) on the draft consultation of the Listowel Municipal District LAP 2023-2029 seeking to have the land rezoned from R4 to R1 in the 2023 LAP, seek to have the current plan varied immediately from R4 to R1 to allow development of the lands. And request an immediate indication on whether KCC would support a material contravention of the Development Plan should an application be made for a residential development on the lands immediately. The submission also includes a site layout showing an indicative scheme for 55 no. units.

## **7.0 Local Authority Submission**

The submission makes reference to the appellant's submission on the forthcoming Listowel Municipal District LAP, Issues of right of way and folio included. The planning authority is satisfied that the issues raised have been addressed in the Planner's report.

## **8.0 Assessment**

The grounds of appeal raised issue with a submission made on the draft Listowel Municipal District LAP and I note that the local authority referenced the stated submission in their assessment. Submission pertaining to variations to land use zonings is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended. 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 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*".

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 R4 Strategic Residential Reserve. The text of Section 2.2.3 and Objective LSR-03 in the Listowel Municipal District LAP 2020-2026 (as set out in section 2 of this report) do not preclude residential development on Strategic Residential Reserve land 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 are within scope.

The appellant has submitted that the lands are landlocked and that access is via a right of way via the adjoining caravan park but there are stated limitations to the use of this right of way. I note that the lands are bounded by road in parts and as such are not considered landlocked and there is potential, in principle to access the lands off said roads.

Pg. 24 of the RZLT guidelines state:

*If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.*

The provision of infrastructure to the subject lands are considered to be in the control of Kerry County Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

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. 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 it 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 provision of footpaths, public lighting, utilities, foul sewer drainage and water connection and the requirement for 'significant works'. For the purposes of falling within the scope of RZLT the criteria is whether it is 'reasonable to consider'. In my opinion it is reasonable to consider that the provision of a footpaths, public lighting 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.

The appellant has also submitted that lands are rented out and in use for agricultural purposes. As noted in the 2022 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 therefore the appeal on these grounds should be dismissed.

Overall I am of the view that it 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)

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-6 meet the qualifying criteria set out in section 653B of the Taxes and 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-6 are located within an 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. These lands identified as KE-C6-RZLT-6 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-6 on the map.

## **10.0 Reasons and Considerations**

The lands identified as KE-C6-RZLT-6 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  
11<sup>th</sup> July 2023