



An
Bord
Pleanála

Inspector's Report ABP-316520-23.

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 Ballyheigue, Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C6-RZLT-4
Appellant	John Duggan.
Inspector	Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-4 are located at Ballyheigue in Co. Kerry.

There are concurrent RZLT appeals for adjacent lands under ABP 316493-23 by Paudie Casey and ABP 316519 by Anto Casey to the west of ABP 316493-23.

2.0 Zoning

The Draft Listowel Municipal District Local Area Plan 2023-2029 pre-draft consultation finished on the 10th 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. 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.

Objective LSR-03 states '*prohibit development on lands zoned as strategic residential reserve (R4) until 80% of all other residential zoned lands have been developed to the satisfaction of the planning authority*'.

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 de-zoned never requested to have them zoned, is a farmer and access is through a farm yard.

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:

- Even though the lands can be serviced it would be unacceptable to divide his farm yard. It would make the farm enterprise redundant.
- The appellant is a full time farmer.

Copy of original submission included where the appellant sought to have his lands de-zoned to agricultural use as they wish to continue farming.

7.0 Local Authority Submission

The submission notes that all planning matters dealt with in the planners report and no new issues raised in the grounds of appeal.

8.0 Assessment

The grounds of appeal refer to the appellants original submission which sought to have the lands dezoned and the grounds of appeal note that the appellant never requested that the lands be zoned.

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 legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I. This position is consistent with 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".

Compliance with the provisions of section 653I or not does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in section 653B.

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 submitted in their original submission and as this was included with the grounds of appeal are considered in this assessment that lands are 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.

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.

Access to the land would be through a farmyard. Suitability off access would be the subject of any future application for lands to be developed and assessed non its merits through the development management process by the relevant planning authority. It is not a criteria for exclusion set out in section 653B(c)(i) and therefore the appeal on these grounds 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 to '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.

Overall 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)

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-4 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-4 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. This lands identified as KE-C6-RZLT-4 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-4 on the map.

10.0 Reasons and Considerations

The identified as KE-C6-RZLT-4 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
12th July 2023