



An
Bord
Pleanála

Inspector's Report ABP-316550-23.

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 Farrenwilliam Station Road, Ardfert , Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C6-RZLT-37.
Appellant	Tim O'Sullivan.
Inspector	Dáire McDevitt

1.0 Site Description

The subject lands identified as KE-C6-RZLT-37 with a stated area of c.4.3hectares are located at Farrenwilliam in Ardfer, Co. Kerry.

2.0 Zoning

KCC website notes that The Tralee Municipal District Local Area Plan 2018-2024 was adopted by the MD members on September 17th at a MD meeting. This LAP supersedes parts of the Tralee/Killarney HUB Functional Area Local Area Plan 2013-2019 and Castleisland Functional Area Local Area Plan 2009-2015.

Ardfer is in Tralee Municipal District Local Area Plan 2018-2024 (and amendments adopted in 2022)

The lands are the subject of three land use zonings: R1 (New/Proposed Residential), R2 (Existing Residential) and R4 (Strategic Residential Reserve).

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 that the land is in agricultural use and that a new entrance would increase traffic across from a school. Objections to the residential zoning of the lands was also raised.

5.0 Determination by the Local Authority

The local authority determined that:

- a) part of the site in question zoned Existing Residential (R2) which contains an existing dwelling and its curtilage (an area of approx.0.13hectares) fulfils the qualifying criteria to be included on the Final Map of the RZLT for the following

reason: 1. As provided by the guidelines, existing permanently occupied residential dwellings are to be indicated on the maps where located in a residentially zoned area but such homes will not be in scope of the tax and owners of such properties will not be liable for tax.

and

b) the remaining part of the site in question zoned Proposed Residential (R1), Existing Residential (R2) and Strategic Residential Reserve (R4) fulfils the qualifying criteria to be excluded from the final map of the RZLT for the following reason: 1. The land is not serviced, or is it reasonable to consider may not have access to services.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of appeal are summarised as follows:

- Appeal the decision to re-zone his lands.
- KCC stated that part of it is zoned and the remaining fulfil the criteria to be excluded from these zones.
- Seeking clear, unambiguous statement from the County Council that it is not zoned.

7.0 Local Authority Submission

- All planning issues relating to the submission are dealt within the planner's report.
- The lands adjoining Goat Street (regarding connections)
- 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 appellant has set out in the grounds of appeal set out that it is an appeal against the decision to re-zoning of his land and requests a statement from KCC that it is not 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 lands are zoned R1 (New/Proposed Residential), R2 (Existing Residential) and R4 (Strategic Residential Reserve). The Plan does not preclude residential development on R4 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 R4, may be available in principle for residential development during the lifetime of the current Plan if certain criteria are met and along with the lands zoned R1 and R2 as are within scope of section 653B(a).

I note that Kerry County Council that there is capacity and that the lands are in scope.

The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines.

9.0 Conclusion & Recommendation

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 which was not raised in the grounds of appeal.

Having regard to the local authority determination, information on file and the grounds of appeal I have no evidence before me that that the lands identified as KE-C6-RZLT-37 are not within the scope of section 653B of the Taxes Consolidation Act 1997, as amended.

The lands identified as KE-C6-RZLT-37 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.

I recommend that the board confirm the determination of the local authority as the lands identified as KE-C6-RZLT-37 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and there are no matters arising that warrant exclusion from the map.

10.0 Reasons and Considerations

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 which was not raised in the grounds of appeal.

The lands identified as KE-C6-RZLT-37 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
17th July 2023