



An
Bord
Pleanála

Inspector's Report ABP-316580-23.

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 Ardshanavooly, Killarney, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-11.

Appellant

Dermot and Michael Lyne.

Inspector

Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-11 with a stated area of c. 2.2 hectares are located at Ardshanavooly 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 which are identified as K-9 and tier 1 (serviced zoned lands) in the Settlement Capacity Audit.

Objectives for Residential Zoning:

KCDP 3-6 Zone land for residential purposes in accordance with the Tiered approach outlined in the National Planning Framework.

KCDP 3-7 Prepare a local area plan for each settlement identified in the settlement hierarchy.

KCDP 3-8 Prepare a Settlement Capacity Audit for each Regional Town and District Town where lands are zoned residential in their respective Local Area Plan which shall inform the zoned land requirements for these settlements.

3.0 Planning History

PA Ref. 18/221 refers to a grant of permission for 10 no. semi-detached dwellings, PA Ref. 20/1237 refers to a grant of permission for 2 blocks of apartments (18 apartments).

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking that their site be excluded on the basis that they have no access and it is not serviced.

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:

- The lands are being actively farmed.
- The lands are not serviced. Lands are served by an agricultural entrance that is not suitable for residential use. They have no control over any future services or access that may traverse third party lands.
- Never sought residential zoning or residential planning permission.
- The land is not vacant or idle

7.0 Local Authority Submission

- Reference to PA Ref 18/221 and 20/1237 for residential developments.
- The planning authority is satisfied that these lands have all services available or are able to connect to services and that they therefore should remain in scope in terms of the RZLT.

8.0 Assessment

The appellant has set out that they did not request that their lands be zoned residential. 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".

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 R1 and therefore are within scope of section 653B(a).

Section 653B(c)(i) refers to lands referred to in paragraph (a)(i) relates to existing uses. As noted on page 11 of the 2022 RZLT Guidelines that *'land which is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates'*. On the basis of the information submitted I have no evidence that this is the case. With regard to the use of the lands for agricultural purposes. As noted in the 2022 RZLT 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. I am satisfied that the lands do not meet the criteria for exclusion set out in section 653B(c)(i) and the grounds of appeal relating to this matter should be dismissed.

The appellant has submitted that the lands are not serviced, that the lands are served by an agricultural entrance that is not suitable for residential use. They have submitted that have no control over any future services or access that may traverse third party lands. The planning authority assessment set out that access has been facilitated for with a service road shown on permitted plans of the housing development to the south. The site is also bounded by Dennehy's Boreen.

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 the local authority determined that that the subject lands are in scope and therefore retained within the RZLT Final Map.

Whilst infrastructure elements/connection 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. Issues relating to capacity have not been raised. 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(b).

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.

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-11 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.

8.0 Conclusion & Recommendation

The lands identified as KE-C6-RZLT-11 are 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. I consider that the lands identified as KE-C6-RZLT-11 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-11 on the map.

9.0 Reasons and Considerations

The lands identified as KE-C6-RZLT-11 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 use of land for agricultural purposes is not a criteria for exclusion under section 653B(c)(i). The 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 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.

Dáire McDevitt
Senior Planning Inspector
18th July 2023