



An
Bord
Pleanála

Inspector's Report ABP-316818-23.

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 Cleeney, Killarney, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-13.

Appellant

Michael O'Shea.

Inspector

Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-13 (land parcel ID KY0000001440) with a stated area of c.11 hectares are located at Cleeney 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.

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 the subject of 2 land use zonings. The bulk of the lands are zoned R4 Strategic Residential Reserve and a section of the eastern portion of the land is zoned R2.

The R4 portion of the lands are identified as KE 02 and allocated Tier 2 on the Tier phasing map which shows Tier 1 and Tier 2 lands in Killarney as part to the Settlement Capacity Audit.

Tier 2 'serviceable zoned lands':

- This zoning comprises lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan i.e. the lands are currently constrained due to the need to deliver some or all development services required to support new development, i.e. road or footpath access including lighting, foul sewer drainage, surface water drainage, water supply and/or additional service capacity.
- These lands may be positioned within the existing built-up footprint of a settlement, or contiguous to existing developed lands or to tier 1 zoned lands, where required to fulfil the spatially sequential approach to the location of the new development within the identified settlement.
- The potential for delivery of the required services and/or capacity to support new development must be identified and specific details provided by the planning authority at the time of publication of both the draft and final development or area plan.

The Killarney plan states that *Residential units will be developed on R1 Proposed Residential lands. These lands are typically centrally located, within walking distance to the town centre and are overwhelming located to the south of the by-pass road and north of the River Flesk. In addition, lands are also proposed to be zoned as Strategic Residential Reserve (R4). Development shall not be permitted on these lands until 80% of the residential zoned lands have been developed.*

Objective KA 82 Support the development of the inner relief road from Deerpark to Loreto Road.

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 lands be excluded on the basis that the N22 will require upgrading works, residential development of this land would be at variance with official TII policy in relation to control of development on/affecting national roads. Infrastructure in relation to safe and direct pedestrian access and vehicular access via the N72 at Hans Lieber Road will be required. Inadequate water supply and foul sewer. Lands are unsuitable for immediate development due to strategic residential at reserve zoning. It is stated that a full time working farm should be considered out of scope. Request that if the local authority does not consider the above mentioned reasons adequate for exclusion then submit that the lands be rezoned for agriculture.

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 the subject of a statutory designation (R4 Strategic Residential Reserve) zoning which precludes development.
- It is submitted that there is no capacity to accommodate new development as shown in the settlement capacity audit and the classification of the lands as Tier 2 serviceable zoned lands. The audit also confirms that the lands are constrained by 'road access' issues.

- Plans for New N22 Farranroe to Killarney bypass are at advanced stage with published options showing the subject lands within an area identified for a future Killarney link road. It is submitted that the primary location of the subject lands for the delivery of this road is both likely and necessary to serve future development on the entirety of the K2 lands.
- The appellant considers it reasonable to state that the R4 designation applies principally because of its location and acknowledged reliance on 'road access' infrastructure. Any application for substantial development on these lands is likely to be considered 'premature' pending the final determination of the N22 bypass route and associated Killarney link road.
- Existing access off N2 serves appellants home and farmyard is not suitable for substantial vehicular loading. Reference to TII submission. In the absence of road upgrades the lands do not have adequate access. There is no road or footpath connectivity, therefore do not comply with section 653B.

7.0 Local Authority Submission

The local authority submitted a detailed submission. Points raised include inter alia:

- KCC set out that it would not be of the view that the residential zoning of the site would be a statutory designation that may preclude development. The lands are zoned R4 Strategic Residential Reserve. The land is therefore zoned residential in the Development Plan. Reference to the Department advice regarding strategic residential reserve lands.
- The local authority gave consideration to the infrastructural criteria in the evaluation of the submission received on the Draft Map.
- The lands have direct access to the public road, where there are footpaths and public lighting, with a watermain and foul sewer on both these roads. The lands can therefore be connected to these services and can be considered in scope.
- Reference to TII submission and Objective KCDP 14-31 relating to transitional zones along national routes.
- UE have confirmed that water/sewer is available on the public road.

- Development of the lands is not reliant on a crossing over the Deenagh river.
- 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 RZLT.

8.0 Assessment

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 R2 and R4 and therefore are within scope of section 653B(a). I note that the lands are identified as Tier 2 in the tiered approach to residential zoned lands the County Development Plan, The local authority determined the lands to be in scope. Tier 2 comprises lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan as such residential development is not precluded during the lifetime of the Plan subject to certain criteria being met. I consider, therefore, the lands are within scope of section 653B(a).

It is submitted that the lands are the subject of a statutory designation (R4 strategic residential reserve land use zoning) which precludes that lands from development and therefore are not within scope. Statutory designations refer to areas required under European and national legislation for the conservation/protection of habitats and species. Examples of which include Special Areas of Conservation (SAC) and Special Protection Areas (SPA). Land use zoning are not statutory designations.

With regard to the R4 Strategic Residential Reserve land use zoning. The text of Section 2 Volume 2 relating to Killarney states that "*lands are also proposed to be zoned as Strategic Residential Reserve (R4). Development shall not be permitted on these lands until 80% of the residential zoned lands have been developed.*" The wording does 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 Plan if certain criteria are met and as are within scope and the grounds of appeal relating to this matter

should be dismissed. I note that Kerry County Council determined that the lands are in scope.

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.

The appellant has submitted that the lands should be excluded as plans for New N22 Farranroe to Killarney bypass are at an advanced stage with published options showing the subject lands within an area identified for a future Killarney link road. It is submitted that the primary location of the subject lands for the delivery of this road is both likely and necessary to serve future development on the entirety of the K2 lands. There is no such indicative route shown on Killarney Land Use zoning Map B contained in volume 2 of the Kerry County Development Plan 2022-2028. The planning authority noted reference to crossing the Deenagh river and concluded that the development of the land is not dependent on a crossing of the Deenagh River as the lands bound the N22 to the east which can be used for access and other services. The planning authority in its assessment has not referred to any plans for the N22 or future Killarney link roads. A submission on file from TII notes that the land is situated within the N22 Farranfore to Killarney Road Improvement Study Scheme Area which would be overseen by Kerry National Road Design Office (NRDO). The location of lands within a road study scheme area does not preclude it from development in principle. Any potential development the lands would require consultation with the Kerry NRDO and for the purposes of RZLT the lands are considered in scope.

Furthermore page 10 of the Residential Zoned land Tax-Guidelines for Planning Authorities 2022 relating to land required for infrastructure and community services states that '*where land is zoned for residential development and specific objective apply to provide such facilities but the extent of land required for such use is not*

identified, the land will fall within scope until such time as it is development and the relevant land will then fall out of scope.'

The appellant argues that any application for substantial development on these lands is likely to be considered 'premature' pending the final determination of the N22 bypass route and associated Killarney link road.

Objective KA 82 refers to support for the development of the inner relief road from Deerpark to Loreto Road. I have reviewed the Killarney Plan and I have found no objective affecting the lands identified as KE-C6-RZLT-13 (land parcel ID KY0000001440). I also note that there is no indicative relief road shown through the lands on Map B in the Killarney Plan contained in volume 2 of the County Development Plan 2022-2028 and therefore the lands remain in scope and the grounds of appeal relating to this matter should be dismissed. Furthermore the presence of a proposed or indicative corridor for a road is not included in the criteria for exclusion under section 653B.

The lands can be served in principle by the existing road network that is in place and are zoned residential. National guidelines and Objective KCDP 14-31 notes that accesses onto national roads limited access may be considered on transitional zoned. As with all development, the applicant/ developer will be expected to provide for any internal road network necessary to serve the site and similarly a connection to the public road network would be provided by the developer in accordance with the requirements of the Local Authority.

Having regard to the foregoing I consider that the lands zoned residential identified as land parcel ID KY0000001440 under KE-C6-RZLT-13 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 identified as land parcel ID KY0000001440 under KE-C6-RZLT-13 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 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 portion of the lands identified as

land parcel ID KY0000001440 under KE-C6-RZLT-13 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 land parcel ID KY0000001440 under KE-C6-RZLT-13 on the map.

10.0 Reasons and Considerations

Having regard to the determination by the local authority, the submitted grounds of appeal, the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and the advice in section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax, the lands identified as land parcel ID KY0000001440 under KE-C6-RZLT-13 should remain on the RZLT map.

The lands are on land zoned residential 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. 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
24th July 2023