



An
Bord
Pleanála

Inspector's Report ABP-316827-23.

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 Castleconway, Killorglin, Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C6-RZLT-10.
Appellant	Timothy O'Neill.
Inspector	Dáire McDevitt

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-10 with a stated area of c. 2.7 hectares are located at Castleconwayin Killorglin, Co. Kerry.

2.0 Zoning

The lands are not zoned in the current Kerry County Development Plan 2022-2028.

The lands were formerly the subject of two zonings ('Residential Existing' and 'Residential Proposed') in the Killorglin Functional Area Local Area Plan 2010-2016 which has expired. As such the site currently has no zoning. I note that an indicative access route was also shown on the land use zoning map.

The Planning Authority in their Determination state "*the land in question is included in a local area plan and is zoned for residential development*"

Section 18(4)(a) of the Planning and Development Act 2000 states that '*A local area plan prepared under this section shall indicate the period for which the plan is to remain in force*'. There is no record on the Kerry County Council website that the LAP has been extended.

The local authority in their assessment refer to a submission made on the Kenmare MD LAP issues paper. I note that this is dated 13th September 2022. There is no record on KCC website of the status of this LAP or what stage is the review at.

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 lands are currently being farmed and there is a private residence and farm buildings on the lands. Reference is made

to a submission regarding rezoning of lands made on the Kenmare Municipal District Local Area Plan 2022-2028 Pre-Draft Consultation.

5.0 Determination by the Local Authority

The local authority determined that the land should be included on the Final RZLT t Map for the following reasons:

1. The land in question is included in a local area plan and is zoned for residential development, 2. the lands is serviced, or is reasonable to consider may have access to services, 3. the land is not affected in terms of its 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

Grounds of appeal are summarised as follows:

- The lands are in agricultural use.
- Refers to a submission regarding rezoning of lands made on the Kenmare Municipal District Local Area Plan 2022-2028 Pre-Draft Consultation.
- Request that the rezoning of lands occur on lands to the northeast of this property.
- Willing to engage with KCC regarding suitable development of the lands, including potential access routes, etc

7.0 Local Authority Submission

- All of the planning issues relating to the submission are dealt with in the planner's report.
- The content of the appeal does not raise any additional points that area required to be addressed by the planning authority.

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 solely or primarily for residential use, or for a mixture of uses including residential. The appeal lands are not zoned under either the Kerry County Development Plan 2022-2028 or a Local Area Plan as required under section 653B(a) and therefore cannot be considered in scope for the RZLT.

I address the other matters raised in the Grounds of Appeal below, however, as set out above the subject site is not zoned for residential use and therefore cannot be considered in scope for the RZLT for that reason.

The grounds of appeal refer to the appellants submission on the Kenmare Municipal District Local Area Plan 2022-2028 Pre-Draft Consultation and issues relating to the potential zoning of these lands. The appellant has requested in the grounds of appeal that the lands are rezoned.

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.

9.0 Conclusion & Recommendation

The appeal lands are not zoned under either the Kerry County Development Plan 2022-2028 or a Local Area Plan as required under section 653B(a) and therefore cannot be considered in scope for the RZLT.

I recommend that the board set aside the determination of the local authority and direct the local authority to remove the lands identified as KE-C6-RZLT-10 from 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(a) of the Taxes Consolidation Act 1997, as amended, the lands identified as KE-C6-RZLT-10 are not zoned under a current Development Plan or Local Area Plan for the area, and as such cannot be considered in-scope for the RZLT.

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