



An
Bord
Pleanála

Inspector's Report ABP-316833-23.

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 Clash West, Tralee Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C6-RZLT-32.
Appellant	Thomas, Breda & Mary King.
Inspector	Dáire McDevitt.

1.0 Site Description

The lands identified as KE-C6-RZLT-32 include land parcel ID KY0000001491, KY0000000998 and KY0000001025 are located at Clash West Tralee, Co. Kerry.

2.0 Zoning

Volume 2 of the Kerry County Development Plan 2022-2028 contains the Tralee Town Development Plan.

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.

Tralee is identified as a large scale 'key town' in the RSES.

The lands are zoned R1 are identified as T1 (Tier 2) in the Tier Phasing Map for Tralee which shows Tier 1 and Tier 2 lands in Tralee 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.

3.0 Planning History

Extensive planning history is set out in the local authority submission.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking that their land be excluded on the basis that the land is used as a functioning farm. Reference is made to attempts to sell the land to the Department of Education and Educational zoning that was attached to the lands previously. Reference also to approaches to KCC to sell land.

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 appellants were unable to sell lands as it was zoned education for c.30 years. The appellants have tried to sell lands to the Department of Education and KCC.
- RZLT discriminates against the landowner who is residential versus the landowner whose land is unzoned/zoned for other purposes.
- Inheritors of the land would not be able to claim agricultural relief as the land will have to be sold.
- Advised against partnerships for developing lands.
- Reference to the 'farm tax bill' of 1985.
- Wish to remain zoned residential but believe not liable for residential tax.
- Land is actively farmed.

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 are required to be addressed by the planning authority.

8.0 Assessment

The grounds of appeal have raised issues which include inter alia the nature of the tax, development partnerships, impacts on inheritors etc that are not within the remit of this assessment. The appellants have also made reference to land use zoning in their grounds of appeal. 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 (i) solely or primarily for residential use,(ii) or for a mixture of uses including residential. The appeal lands are zoned residential therefore are within scope of section 653B(a).

Kerry County Development Plan 2022-2028 sets out a tiered approach to residential land use zoning (Tier 1 and Tier 2). The appeal lands are identified as T1 in the Settlement Capacity Audit and designated as Tier 2 Serviceable Zoned land. Page 26 of the RZLT Guidelines states that ‘furthermore Settlement Capacity Audits undertaken as part of the development plan review process will provide succinct information of capacity and confirmation of servicing. Tier 2 lands in the current Kerry County Development Plan refer to lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan. The wording contained in the Plan does not preclude residential development 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 such are within scope.

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. 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 the grounds of appeal relating to this matter should be dismissed.

Having regard to the foregoing and the grounds of appeal I consider that the lands zoned residential identified as land parcel ID KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that the appellants have not demonstrated that there are matters arising that warrant exclusion from the map.

9.0 Conclusion & Recommendation

The lands identified as land parcel ID KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 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 KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 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 KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 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

KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 should remain on the RZLT map.

The lands are 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
26th July 2023