



An  
Bord  
Pleanála

## Inspector's Report ABP-316851-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Lands at Ballygologue Listowel, Co. Kerry.
<b>Local Authority</b>	Kerry County Council.
<b>Local Authority Reg. Ref.</b>	KE-C6-RZLT-1
<b>Appellant</b>	Patrick Flaherty.
<b>Inspector</b>	Dáire McDevitt

## **1.0 Site Description**

The appeal lands identified as KE-C6-RZLT-1 are located adjacent to Stokers Grove/Stokers Drive/Stokers Lawn housing development in the townland of Ballygologue in Listowel, Co. Kerry.

## **2.0 Zoning**

The Draft Listowel Municipal District Local Area Plan 2023-2029 pre-draft consultation finished on the 10<sup>th</sup> March 2023. This will replace the Listowel Town Development Plan 2009 which is stated to be contained in Volume 2 of the Kerry County Development Plan 2022-2028 and the Listowel Municipal District LAP 2020-2026.

Section 1.8.1 Tralee, Killarney, and Listowel Town Development Plans 2019-2015 (as extended & varied) of the Kerry County Development Plan 2022-2028. 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. The land-use zoning maps for each town are included 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.

Listowel is identified as a regional town in the county settlement hierarchy.

The lands are zoned R1 New/Proposed Residential.

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**

Reference to incomplete applications dating from 2007 in the planning authority assessment,

### **4.0 Submission to the Local Authority**

The appellant made a submission to the local authority seeking that his site be excluded on the basis that it does not meet the criteria for being in scope. The site is landlocked within no suitable independent access to either the N39 or the John B. Keane Road. It is surrounded by Kerry County Council residential estates to the north and west, by the Red Cottages to the south, and by a private house and its grounds to the east. There is an existing agricultural entrance on the N69 at the side of No. 6 Red Cottages and it is submitted that this has already been deemed as not being a suitable access for residential development as it is too narrow and too close to the roundabout.

### **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:

- Lands outside the appellants ownership have amalgamated with his lands and identified as parcel ID KY0000000011 on the RZLT Draft Map.
- To access the appellants lands via Stokers estate would require access and services through these third party lands.
- The lands are landlocked and without suitable access onto the N69 or the John B. Keane Road.
- Engineer's report refers inter alia to the requirement to demolish a protected structure (6 The Red Cottages) to create suitable access, inadequate sightlines etc. and concludes that the lands are landlocked and cannot be developed via the existing agricultural entrance serving the lands.

The grounds of appeal include inter alia the initial submission to Kerry County Council, an Engineer's Report and photographs, evaluation report and copy of land registry map.

### **7.0 Local Authority Submission**

- The appeal in relation to the inclusion of the lands on the RZLT draft map is noted.

- The RZLT guidelines state that "where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in scope".
- The site adjoins an existing housing development (Stokers Grove/Stokers Drive) to the north, which is in the ownership of Kerry County Council. An access from this existing estate can be facilitated to the lands subject to this appeal. An access from Stokers Lawn, also in the ownership of Kerry County Council, could also be facilitated. (photograph and aerial image included)
- The planning authority is satisfied that the lands have all services available or are able to connect to services and that they should therefore remain in scope in terms of the RZLT.

## 8.0 Assessment

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 Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 the restrictions to considering criteria for inclusion. This states 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*".

Whether the site complies section 653O 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.

The grounds of appeal set out that the lands should be excluded as the lands identified as parcel ID KY0000000011 include lands that is not within the appellants ownership. With regard to the issue of ownership raised by the appellant, the RZLT Guidelines clearly set out that in the preparation of the RZLT maps, the local authority does not need to establish who the owner(s) of the lands are in order to include lands on the draft, supplemental or final map. An appeal relating to the inclusion of land on the RZLT map should be made by the relevant landowner of the lands.

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 New/Proposed Residential and therefore are within scope of section 653B(a).

The appellant has submitted that the lands are landlocked with no suitable access off the N69 or the John B Keane Road and that access via Stokers estate would be via lands that he would be required to purchase.

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 planning authority noted that access is available via KCC owned lands. I note concerns raised regarding the requirement to demolish a protected structure (6 Red Cottages). Based on the information on file I note that there are other potential means of access that would not require same, therefore this is not a reason for exclusion from the map.

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).

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-1 meet the qualifying criteria set out in section 653B of the Taxes and 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-1 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 lands identified as KE-C6-RZLT-1 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-1 on the map.

## 9.0 Reasons and Considerations

The identified as KE-C6-RZLT-1 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.*

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Dáire McDevitt  
Senior Planning Inspector  
13<sup>th</sup> July 2023