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Bord  
Pleanála

## Inspector's Report ABP-316863-23.

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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 Ballyard, Tralee Co. Kerry.
<b>Local Authority</b>	Kerry County Council.
<b>Local Authority Reg. Ref.</b>	KE-C6-RZLT-30.
<b>Appellant</b>	Paul Mullins.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Description**

The lands identified as KE-C6-RZLT-30 (land parcel ID KY0000001488 )are located at Lovers Lane, Ballyard in Tralee, Co. Kerry.

## **2.0 Zoning**

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

Tralee is identified as a large scale 'key town' in the RSES. The lands are zoned R1 are identified as T-14 (Tier 1) 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 1 lands are serviced zoned lands which are able to connect to existing services for which there is service capacity available, and can therefore accommodate new development.

## **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 land be excluded on the basis that the land is used for stables and grazing horses. The land is landlocked on three sides with no access unless crossing third party lands. The width of the road is c.4.5m in places, no footpaths or space for footpaths. The lands should be excluded in the grounds of lack of adequate road and footpath access with sufficient service capacity.

## **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 land adjoins the appellant's private residence, comprises stables and grasslands and is used for grazing horses. And there is no intention to develop the lands.
- Lovers Lane does not provide access to the necessary public infrastructure to be included in the final RZLT map. The land is landlocked on 3 sides with the only access at present via Lovers Lane which is a narrow cul-de-sac with no footpaths and no room for paths to be constructed.
- The lands are used for agricultural purposes (horses).
- The town plan indicated a road may be constructed in time on the northern side of this land which could give access but until such time this is provided the land is landlocked.

## 7.0 Local Authority Submission

- All of the planning issues relating to the submission are dealt with in the Planner's Report.
- 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 lands are zoned R1 and therefore are within scope of section 653B(a).

The appellant has submitted that the land should be excluded as Lovers Lane does not provide access to the necessary public infrastructure to be included in the final RZLT map. That the land is landlocked on 3 sides with the only access at present via Lovers Lane which is a narrow cul-de-sac with not footpaths and no room for paths to be constructed. KCC has highlighted that under Planning Reg. No. 11/308014 an access road was permitted to serve the adjoining land to the west of the site via the Wetlands Centre to the north and Planning Reg. No. 21/678 to the west uses this road. The lands to the north, including the access road, are in the ownership of Kerry County Council and access can therefore be facilitated either by the access road or by a separate access from KCC lands. 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, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and the grounds of appeal relating to this matter should be dismissed.

Suitability of any proposed access would be the subject of any future application for lands to be developed and assessed on its merits through the development management process by the relevant planning authority. It is not a criteria for exclusion set out in section 653B(c)(i) and therefore the appeal on these grounds should be dismissed.

With regard to the use of the lands for agricultural purposes/horses. 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 I consider that the lands zoned residential identified as land parcel ID KY0000001488 under KE-C6-RZLT-30 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 KY0000001488 under KE-C6-RZLT-30 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 KY0000001488 under KE-C6-RZLT-30 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 KY0000001488 under KE-C6-RZLT-30 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 KY0000001488 under KE-C6-RZLT-30 should remain on the RZLT map.

The lands identified as land parcel ID KY0000001488 under KE-C6-RZLT-30 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.*

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