



An
Bord
Pleanála

Inspector's Report ABP-316866-23.

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 Ross Road, Killarney, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-38.

Appellant

Padraig and Declan Lynch.

Inspector

Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-38 with a stated area of c. 4.1 hectares are located at Ross Road in Killarney, Co. Kerry.

The grounds of appeal refer to 'Site A' and 'Site B'. The planning authority considered the tract of lands as a whole under KE-C6-RZLT-38, this also included plots associated with an existing dwelling.

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. 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.

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 zoned R1 New/Proposed Residential which are identified as K-18 and tier 1 (serviced zoned lands) in the Settlement Capacity Audit.

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

None stated.

4.0 Submission to the Local Authority

The appellant made a submission to the local authority seeking that their site be excluded on the basis that IW correspondence submitted confirms that water supply to site A and Site B is not feasible until necessary upgrade works are carried out to the nearest watermain. And that an assessment of available and/or capacity of electrical, telecommunications, public lighting, roads and footpaths has not been carried out. Site B would be developed concurrently with Site A as it does not enjoy any wayleave rights for the provision of services. Site D comprises private residence that is subject to LPT.

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 and 4) as provided by the guidelines, existing permanently occupied residential dwellings are to be indicated on the maps where located in a residential zoned area but such homes will not be in scope of the tax and owners of such properties will not be liable for this tax.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of appeal are summarised as follows:

- The appeal relates to ground 2 of the local authority determination which relates to the lands being serviced or it is reasonable to consider may have access to services.
- The appellants have submitted correspondence from Irish Water (now Uisce Eireann) dated 21 June 2021 relating to a pre-connection enquiry where it is set out that upgrades of the existing water supply network would be required to service the development.
- KCC planners report states that the site has direct access to the public road where the water main is located. This is incorrect. The property has direct access to Ross Road (where a 100mm diameter watermain exists). The connection for the upgrade works is on the Muckcross Road.
- The letter from Uisce Eireann refers to a number of sewers running through the property which need to be protected by c.10m wide wayleaves along the route of the pipeline. It is submitted that this is incorrect as they are aware of only one such sewer.
- Issue of site 'B' not enjoying a wayleave through site 'A' is not addressed in the planner's report.

- The guidelines do not state what is considered ‘minor works’. The appellants submit that the works required are in fact substantial in quantum and financially.
- Punitive tax measure.
- Request that the Bord overturn KCC decision and remove sites A and B from the Final map.

7.0 Local Authority Submission

Points raised include inter alia:

- Reference to the Uisce Eireann correspondence confirming that a sewer and water main exist on public road in close proximity to the site. And that it is reasonable to consider that a minimum the site is able to connect to services as set out in the RZLT Guidelines.
- Lands directly adjoin Ross Road where there is a watermain and public sewer.
- The land also border Castle Falls and Kings Park estates where access to the site can be facilitated by KCC.

8.0 Assessment

The grounds of appeal relate to the second reason in the local authority Determination. This report address all of the Determination and lands associated with KE-C6-RZLT-38. Furthermore as the appellants have included the original submission with the grounds of appeal, this forms part of the appeal documentation so I shall also address issues raised in it.

The appellants have raised issue with the principle of RZLT which they consider a punitive tax. 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 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".

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 and therefore are within scope of section 653B(a).

The lands identified as KE-C6-RZLT-38 include an appellants place of residence as addressed in the local authority's Determination.

Section 3.1.1 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 sets includes guidance on the criteria for inclusion with the scope of the tax measure. This sets out with regard to residential properties that *"Land which is zoned residential and contains existing residential development such as estates or individual houses are also considered 'in scope' from a zoning perspective and therefore must be included on the maps, however home owners of residential properties within these areas will not be liable for tax (see section 653O (1)(a) of the legislation)*. The legislation does not give the board a role in determining whether a site is a 'relevant site' by applying the provisions of section 653O or whether a site is ultimately liable for a charge under the RZLT.

The appellants have submitted that the lands are not serviced and have included correspondence from IW dated 21 June 2021 relating to a pre-connection enquiry which sets out that connection is feasible subject to upgrades. It is submitted that this are significant and not minor as determined by the local authority.

Page 8 of the RZLT Guidelines state 'a need for network upgrade is not considered to exclude lands where sufficient treatment capacity is confirmed to exist'. The local authority determined the lands to be in scope. Correspondence from Uisce Eireann dated 24th January 2023 confirm that a water main exists on the public road in close proximity to the site and that the watermain is accessible c.10m away via the Ross Road. And confirm that a sewer exists on the public road in close proximity to the site and it is accessible 10m away via the Ross Road. UE also advise that a number of sewers pass through the site that would need to be protected with wayleave. This is disputed by the appellants who state they are only aware of one.

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 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. Issues pertaining to existing sewers which may traverse the site do not preclude the lands from development in principle.

With regard to the provision of foul sewer drainage and water connection and the requirement for 'significant works'. 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, 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.

Having regard to the foregoing I consider that the lands identified as KE-C6-RZLT-38 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.

8.0 Conclusion & Recommendation

The lands identified as KE-C6-RZLT-38 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. I consider that the lands identified as KE-C6-RZLT-38 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-38 on the map.

9.0 Reasons and Considerations

The lands identified as KE-C6-RZLT-38 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. The identified as KE-C6-RZLT-38 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
18th July 2023