



An
Bord
Pleanála

Inspector's Report ABP-316906-23.

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 Ballycasheen, Killarney, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C6-RZLT-47.

Appellant

Ciara & Liam Fahy

Inspector

Dáire McDevitt.

1.0 Site Description

The appeal lands identified as KE-C6-RZLT-47 (Parcel ID KY00000001380) with a stated area of c.5.2 hectares are located at Killarney Glamping at the Grove, Ballycasheen Road, Killarney, Co. Kerry. The southern portion of the lands runs along the banks of the River Flesk with the northern portion running along the Ballycasheen Road where there are existing houses.

There are concurrent RZLT appeals by Michael & Linda O'Sullivan (ABP 316821-23) and Joan O'Sullivan (ABP 316929-23) for lands at Ballycasheen for lands identified as Land parcel ID KY00000001380. I note that each appeal refers to individual plots of varied sizes. The local authority has distinguished between plots through the use of KE-C6-RZLT-45, KE-C6-RZLT-46 and KE-C6-RZLT-47 yet the maps do not clearly show the individual plots.

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 R2 Existing Residential and P1 Agriculture. The lands are not included on the Tier phasing map which shows Tier 1 and Tier 2 lands in Killarney as part to the Settlement Capacity Audit.

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 land be excluded on the basis that no capacity in the surface water drainage, lands flood and It is stated that lands are zoned R2 and that lands zoned R1 and R4 would be better suited to meet the housing needs.

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:

- There is not sufficient capacity in the surface water drainage system (public storm pipe) to service the lands.
- It is submitted that due to flooding there is not sufficient capacity in the existing surface water drainage system. It is also submitted that the local authority have not provided evidence that there is capacity.
- The Ballycaheen Road floods, gullies on the property overflow and flood waters are stated to be in danger of entering houses.
- Have repeatedly requested evidence from KCC that there is capacity in the surface water drainage system, Responses have referred to the Killarney WWTP.
- Seeking evidence of the capacity of the storm pipe serving the property. If ABP source this evidence in a de novo appeal then request that this evidence be scrutinised in an oral hearing and call for an Oral Hearing under section 134 of the Act.
- Reference to Sister Mary Christian & Ors v. Dublin City Council [2012] IEHC 163.
- Physical condition of the land is affected by flooding. Photographs submitted showing flooding).

- The local authority have failed to have regard to the principles of interpreting tax statutes as established under *The Inspector of Taxes v Kirwan* 1981 IR 117.
- Issue of archaeology is referenced in documentation (email correspondence with LA) attached to the appeal.

The following is included with the grounds of appeal:

- ID Map.
- LA Determination Letter
- Email correspondence with LA
- CFRAM Flood Map
- Letter from Engineer
- Photographic evidence of flooding
- LA Report.

7.0 Local Authority Submission

Points raised include inter alia:

- In relation to flooding the planning authority refers to advice received from the Department of Housing, Local Government and Heritage that if lands meet the zoning and servicing criteria they should not be excluded on the basis of flood risk.
- The planning authority is satisfied that these lands have all services available and that they remain in scope in terms of the RZLT.
- It is noted that archaeology is referred to in the appeal. There are no archaeological monuments identified on the Record of Monuments and Places for these lands, map included.

8.0 Assessment

There grounds of appeal include copies of correspondence on file from post Determination and pre-appeal between Ms Ciara Fahy (on behalf of Ciara & Liam Fahy, Michael & Linda Crossan and Joan O'Sullivan) and D. Burke (KCC).

The appellants have requested that the Board source evidence relating to surface water drainage and stated that they call for an oral Hearing under Section 134.

With regard the appellants request for an oral hearing, I note that no fee for an oral hearing has been included as such this request is not a valid one.

Furthermore 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 (i) solely or primarily for residential use,(ii) or for a mixture of uses including residential. The appeal lands are the subject of two zonings. The northern portion is zoned R2 and therefore are within scope of section 653B(a). The southern portion is zoned P1 Agriculture where I note that residential is 'open for consideration' . The Residential Zoned Land Tax – Guidelines for Planning Authority's June 2022 is very clear. Land to be considered within scope are those zoned solely or primarily for residential use or under mixed use where residential is 'permitted in principle'. This is not the case the portion of the land identified under KE-C6-RZLT-45 that are zoned P1 and as such do not fall within the scope of section 653B of the Taxes Consolidation act 1997 as amended and the local authority should be directed to exclude this portion from the final map. I note that portion of the lands associated with a Glamping business was excluded from the Draft map.

The portion of lands are zoned 'R2' includes a number of properties, one of which is stated to be occupied by the appellants thus it is submitted is exempt from RZLT.

Section 3.1.1 of the Residential Zoned Land Tax -Guidelines for Planning Authorities June 2022 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 existing surface water drainage system (Storm Pipe) does not have capacity which leads to flooding. That the Ballycaheen Road floods, gullies on the property overflow and flood waters are stated to be in danger of entering houses. An Engineers report which includes an opinion that the lands do not have access to a surface water drainage system of sufficient capacity.

Section 653B(c) states that land satisfies the criteria for inclusion on the map if it is reasonable to conclude that its physical condition is not affected by matters to preclude the provision of housing including contamination and the presence of known archaeological or historic remains. The local authority is correct to point out that flood risk is not mentioned in this sub-section. However it is not excluded either, and the use of the word “including” would indicate that relevant matters of the site’s physical condition are not restricted to contamination or archaeological and historic remains. Housing can be provided on lands subject to a certain level of flood risk where the proper planning and sustainable development of the area justified it, so the presence of flood risk would not always indicate that the physical condition of the land precludes the provision of housing. Based on the information available I have no evidence that this is the case for the portion of lands zoned R2 and conclude that it would be reasonable to consider that those lands zoned R2 are not affected in terms of their physical condition to preclude the provision of housing. Therefore the grounds of appeal relating to this matter should be dismissed.

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, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

Documentation submitted with the application refers to the presence of a Fulacht Fiadh on the land. While not raised at submission stage with the local authority as it is included with the appeal documentation I shall address it here. The local authority has stated that no archaeological monuments are identified on the Record of Monuments and Places for these lands. The grounds of appeal have not included evidence that there is. Based on the information contained in the submissions a, on file and on the Record of Monuments and Places for these lands I have no evidence to support that assertion that there is a recorded monument on the lands. 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 zoned residential identified as KE-C6-RZLT-47 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 southern portion lands identified as KE-C6-RZLT-47 are the subject of P1 Agriculture land use zoning under which residential development is not a permitted in principle use. As such this portion of the land does not fall within the scope of section 653B(a) and should be excluded from the map. I recommend that the board cancel the determination of the local authority relating to this portion of the lands and direct the local authority to remove this portion of the lands identified as KE-C6-RZLT-47 from the map. The remainder of the lands 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 KE-C6-RZLT-47 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 relating to the remainder of the lands direct the local authority to retain the lands identified as KE-C6-RZLT-47 on the map.

10.0 Reasons and Considerations

The southern portion lands identified as KE-C6-RZLT-47 are the subject of P1 Agriculture land use zoning under which residential development is not a permitted in principle use. As such this portion of the land does not fall within the scope of section 653B(a) and should be excluded from the map.

The remainder of the lands identified as KE-C6-RZLT-47 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.

Dáire McDevitt
Senior Planning Inspector
18th July 2023