



An  
Bord  
Pleanála

## Inspector's Report ABP-316974-23.

---

<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 Sli na Speire, Clieveragh, Listowel, Co. Kerry.
<b>Local Authority</b>	Kerry County Council.
<b>Local Authority Reg. Ref.</b>	KE-C6-RZLT-48
<b>Appellant</b>	Shaun Hegarty.
<b>Inspector</b>	Dáire McDevitt

## **1.0 Site Description**

The appeal lands identified as KE-C6-RZLT-48 with a stated area of c.0.4 hectares are part of Sli na Speire housing estate 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 R2 (Existing Residential). Lands zoned R2 in Listowel are classed as Tier 1 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**

There is an extensive planning history associated with the lands which is set out in detail in the local authority's correspondence dated 16<sup>th</sup> May 2023. This relates to the housing development Sli na Speire.

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

The appellant made a submission to the local authority seeking to his lands removed from the draft map on the basis that the lands remain undeveloped due to financial reasons and that they are not vacant or idle and therefore should not be subject to RZLT.

### **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**

An extensive appeal has been lodged, the grounds of appeal are summarised as follows:

- Unable to develop the lands for financial reasons.
- Reference to submission made to the KCC relating to a Variation of the Listowel Town Plan 2009-2015 and Kerry County Development Plan 2022-2028.
- The lands are not vacant or idle.
- The appeal documentation includes a section that is referenced as 'Private & Confidential – for personal & commercially sensitive information and is requested to be redacted.

The grounds of appeal include letters of authority from Shaun Hegarty c/o Margaret Hegarty giving Hegarty Consulting Engineers authority to act on his behalf in respect of the appeal.

### **7.0 Local Authority Submission**

- The appeal in relation to the inclusion of the lands on the RZLT draft map is noted.
- All planning issues relating to the submission are dealt within the Planner's Report.
- The lands are zoned R2 (Existing Residential) in the Listowel Town Development Plan 2022-2028, the lands are therefore included in a development plan and are zoned for residential development.
- The planning authority is satisfied that these lands have all services available and that they therefore should remain in-scope in terms of the RZLT

## 8.0 Assessment

The grounds of appeal raised issue with submissions made on the Variation of the Listowel Town Plan 2009-2015 and again to the Kerry County Development Plan 2022-2028. Submissions pertaining to variations to land use zonings is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended.

The grounds of appeal also raise financial reason for the lands not being development as grounds for exclusion from the RZLT. Submissions pertaining to financing is not an issue considered within the provision of section 653B Taxes Consolidation Act 1997, as amended.

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"*.

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 R2 and therefore are within scope of section 653B(a).

Section 653B(c)(ii) sets out land that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. As noted by the local

authority this this refers to mixed use zoned land as such does not apply in this instance and this grounds of appeal should be dismissed.

Section 653B(c)(i) refers to lands referred to in paragraph (a)(i) relates to existing uses. As noted on page 11 of the 2022 RZLT Guidelines that *'land which is zoned solely or primarily for residential use such as 'Residential' or 'New Residential', existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates'*. On the basis of the information submitted 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 should be dismissed.

Having regard to foregoing, 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, the lands identified as KE-C6-RZLT-48 meet the provisions of section 653B for inclusion and therefore there are no matters arising that warrant exclusion from the map.

## **8.0 Conclusion & Recommendation**

The lands identified as KE-C6-RZLT-48 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-48 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-48 on the map.

## **9.0 Reasons and Considerations**

The identified as KE-C6-RZLT-48 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  
12<sup>th</sup> July 2023