



An
Bord
Pleanála

Inspector's Report ABP-320376-24

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 south of Countess Road, Killarney, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C18-RZLT-4.

Appellant

Dipharma Ltd.

Inspector

Fergal Ó Bric.

1.0 Site Description

The appeal lands identified as KE-C18-RZLT-4 and Parcel ID KY0000001685 (part of) are located to the south of Countess Road in Killarney, Co. Kerry. The lands are located c.0.8kilometres south-east of the town centre.

2.0 Zoning

The Killarney Town Development Plan.is set out within Volume 2 of the Kerry County Development Plan (CDP) 2022-2028.

Section 1.8.1 of the CDP sets out that the Tralee, Killarney, and Listowel Town Development Plans 2009-2015 (as extended and varied) are being incorporated into the county 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 three towns and consolidates their associated written texts. The CDP sets 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 also included in Volume 2 of the Kerry County Development Plan 2022-2028. As per Table 3.7, the Zoned Land Required for the plan period has been determined based on the Settlement Capacity Audit (SCA) 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 Regional Social Economic Strategy (RSES) for the southwest region.

The lands are largely zoned R1 (New/Proposed Residential) and a small portion to the south-west of the land parcel are zoned R2 Existing Residential. The lands are identified as part of K-12 within the Settlement Capacity Audit (SCA) as set out within the Killarney Town Development Plan. The lands are designated as Tier 2 (Serviceable Zoned Land) in the tiered approach to the zoning of land for residential development.

3.0 Planning History

I am not aware of any relevant planning history pertaining to the lands.

4.0 Submission to the Local Authority

The appellant made a detailed submission to the local authority, including an engineering services report seeking that their R1 and R2 residentially zoned lands be removed from the RZLT map on the basis that the land is not sufficiently serviced to support new residential development. Specifically, the appellants set out that an upgrade of the water supply network upstream of the subject lands would be required in order to facilitate residential development on the subject lands.

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 for 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 decision taken by Kerry County Council (KCC) did not adequately consider whether there is sufficient service capacity available to service a residential development on the subject lands. The determination by the Planning Authority ignores the fact that water supply cannot be accessed at the subject lands due to service capacity issues in the wider network.
- The appellants lands are designated as 'Tier 2' residential lands on the 2022 Kerry County Development Plan based on infrastructural deficiencies and, therefore, cannot be considered to come within scope of the RZLT.
- The development of Tier 1 lands in advance of Tier 2 lands would not conform with the phasing of residential zoned lands as set out in the County Development Plan and be contrary to the provisions of Section 653B (b) (ia) (i) of the Taxes Consolidation Act 1997, as amended.
- There is no requirement to adhere to the RZLT Guidelines for Planning Authorities, June 2022. The Board can have regard to the Guidelines. However, the PA and the Board must consider whether the land meets the qualifying criteria set out within Section 653B of the Taxes Consolidation Act 1997, as amended, in order to determine if the lands are in scope.
- There is no storm water infrastructure serving the subject lands and the topography of the site presents issues with the provisions of such infrastructure.
- The foul sewer network is likely to be constrained at this location.
- There are a number of road improvement works, and road upgrades require proximate to the site in order to address the on-going road network capacity issues within the town and along Countess Road. It is not reasonable to consider that the subject lands may have access or be connected to the public infrastructure, necessary for dwellings to be developed on the subject lands.

- Only land which is reasonable to consider may have access, or be connected to public infrastructure and facilities, necessary for dwellings to be developed should be included within the RZLT map in accordance with the express provisions of the Taxes Consolidation Act 1997, as amended. However, at this time the lands are out of scope.
- A number of legal precedents are quoted referencing to the status of the Tier 2 designated lands and their phasing in the Core Strategy.

7.0 Local Authority Submission

The local authority made a submission to the Board. Points raised include the following:

- The Local Authority is satisfied that the piped services infrastructure is located in proximity to the subject lands and, therefore, the lands should be considered to be connected to or able to connect to and, therefore, are in scope.
- The Planner has referenced Section 2.2.2 of the current Killarney Town Development Plan regarding the development of R1 residential zoned lands.
- The Local Authority submission references the submission from Uisce Eireann (UE) which confirms that connection to the public watermain and foul sewer services is possible on the public road in proximity to the lands, both stated to be within approximately five metres from the lands.
- The UE capacity registers does not identify any capacity issues in terms of water or wastewater to service the lands. The lands directly adjoin Countess Road where there are water and wastewater services available.
- There are footpaths and streetlighting available on both sides of Countess Road.

8.0 Assessment

The grounds of appeal have raised issues regarding the Planning Authority's reliance on the provisions set out within the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022), rather than the provisions of the Taxes Consolidation Act 1997 (as amended), which the PA/Board must rely upon when determining whether or not a parcel of land is within scope.

Under section 653J of the Taxes Consolidation Act 1997 (as amended) the board's role in the current appeal is to review the determination of the local authority under section 653E of the Act 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 clearly set out within Section 3.3.2 the following "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 of the Taxes Consolidation Act 1997 (as amended) only".

Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the RZLT 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 zoned residential therefore are within scope of section 653B(a).

The Kerry County Development Plan 2022-2028 sets out a tiered approach to residential land use zoning (Tier 1 and Tier 2). The appeal lands are identified as K-12 (part of) in the Settlement Capacity Audit and designated as Tier 2 Serviceable Zoned land. Page 26 of the RZLT Guidelines states that ‘furthermore Settlement Capacity Audits undertaken as part of the development plan review process will provide succinct information on capacity and confirmation of servicing. The local authority determined the lands to be in scope. Tier 2 comprises lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the Plan as such residential development is not precluded during the lifetime of the Plan subject to certain criteria being met. I consider therefore, the lands are within scope of section 653B(a).

The appellant submits that it would not be possible to develop the lands in full without addressing traffic capacity issues as identified in the County Development Plan. These relate to general road and junction improvements within the Killarney town area and the Countess Road area. The appellant submits that the development of the subject lands could not be progressed in advance of these road and junction improvement works being completed.

The absence of the completion of road and junction improvements in the wider Killarney town and specifically along Countess Road does not preclude residential development on the lands. Any proposal would need to incorporate proposals as part of a site layout. This matter would be the subject of relevant agreements and consents and assessed by the planning authority through the development management process. The presence of objectives for the upgrade of roads and junctions is not included in the criteria for exclusion under Section 653B of the Taxes Consolidation Act 1997 and, therefore, the land remains in scope and the grounds of appeal relating to this matter should be set aside.

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 '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 lands, therefore, 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-C18-RZLT-4 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 located 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. The lands identified as KE-C18-RZLT-4 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 recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as KE-C18-RZLT-4 and land Parcel ID KY0000001685 (part of) on the map.

10.0 Reasons and Considerations.

The lands located 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. The lands identified as KE-C18-RZLT-4 and land parcel ID KY0000001685 (part of) 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.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C18-RZLT-4

Appeal by Dipharma Ltd. in accordance with section 653J of the Taxes

Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Kerry County Council on the 26th day of June 2024 in respect of the site described below.

Lands at: Countess Road, Killarney Co. Kerry

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID number KY0000001685 (part of) under KE-C18-RZLT-4 should remain on the RZLT map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the

primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as KE-C18-RZLT-4 (Parcel ID number KY0000001685-part of) located on residentially zoned lands identified within the current Killarney Town Development Plan are considered in scope of Section 653B(b) of the Taxes Consolidation Act 1997, as amended. The lands are located within an established urban area with documentary evidence from Uisce Eireann that 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 in accordance with the residential zoning objective that applies to these lands.

I confirm that the report represents my professional 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.

Fergal Ó Bric
Planning Inspectorate

4th day of September 2024