



An
Bord
Pleanála

Inspector's Report ABP-320398-24

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 final map

Location

Clash West, Tralee Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C18-RZLT-1.

Appellant

Thomas, Breda & Mary King.

Inspector

Fergal Ó Bric

1.0 Site Description

The lands identified as KE-C18-RZLT-1 and include land parcel ID numbers KY0000001491, KY0000000998 are located at Clash West, Tralee, Co. Kerry, to the north-east of the town and adjacent to the local racecourse.

2.0 Zoning

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

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-New/Proposed residential and R2-Existing Residential. The lands are designated as Tier 2 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 2 'serviceable zoned lands':

This zoning 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 i.e. the lands are currently constrained due to the need to deliver some or all development services required to support new development, i.e. road or footpath access including lighting, foul sewer drainage, surface water drainage, water supply and/or additional service capacity.

These lands may be positioned within the existing built-up footprint of a settlement, or contiguous to existing developed lands or to tier 1 zoned lands, where required to fulfil the spatially sequential approach to the location of the new development within the identified settlement.

The potential for delivery of the required services and/or capacity to support new development must be identified and specific details provided by the planning authority at the time of publication of both the draft and final development or area plan.

3.0 Planning History

The relevant planning history is considered to include the following:

PA reference number 24/192, in 2024 Kerry County Council refused outline planning permission for the development of thirty-eight dwelling units. This decision is currently under appeal to the Board under reference number 320357-24. No decision has issued by the Bord to date and this case is due to be decided later in 2024.

PA reference number KE-C6-RZLT-32, in 2023 Kerry County Council determined that the lands should be included within the RZLT map. ABP reference 316833-23-, in 2023, the Board confirmed the determination of the Planning Authority and directed the local authority to retain the lands identified as land parcel ID numbers KY0000001491, KY0000000998 and KY0000001025 under KE-C6-RZLT-32 on the RZLT map.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority setting out that An Bord Pleanála amended their order after the identification of a clerical error. The appellants contend that the land plot identification numbers for the lands at Clash west Tralee are incorrect and that these incorrect numbers have again been included by KCC in their Draft RZLT Map 2024. They state that land plot KY 0998 includes two private dwellings belonging to their neighbours at Meanus, Killarney, and the

land parcel IKY01491 is located at Carrigeencullia, Killarney. The appellants state that Revenue is interested in the RZLT maps, an address and folio number.

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 reasons:

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 appellants state that there are contradictions between the planning decision issued under planning reference 24/192, relating to outline planning permission for the development of thirty-eight dwelling units and the RZLT determination.
- This is the second year that the lands have been included within the RZLT mapping by KCC. Last year the Board determined that the lands should be included within the RZLT mapping.
- The purpose of the RZLT is to incentivise landowners to bring their lands onto the market. Having gone to considerable expense, with the submission of an application for outline permission, we are being blocked by the Local Authority from releasing the lands to the market. If we are unable to release the lands to the market, they believe that they should not be liable to be included within the RZLT map.

- They wish for their lands to remain zoned residential but are of the opinion that they should not be liable for the residential zoned land tax.

7.0 Local Authority Submission

- All of the planning issues relating to the submission are dealt with in the Planner's Report.
- The content of the appeal does not raise any additional points that are required to be addressed by the planning authority.

8.0 Assessment

The grounds of appeal have raised issues which include inter alia the reasons for refusal as set out under planning reference 24/192, the blocking of the Local Authority from permitting a release of the lands to the market etc., that are not within the remit of this assessment. 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 Taxes Consolidation Act for inclusion on the RZLT map.

The legislation does not give the board a role in determining zoning submissions by applying the provisions of section 653I. This position is consistent with 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” and consideration will be had to the Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022. Compliance with the provisions of Section 653I, or not, does not fall within the remit of this report. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in Section 653B.

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 zoned residential and, therefore, fall within scope of Section 653B(a) of the Act.

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 T1 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 of capacity and confirmation of servicing. Tier 2 lands in the current Kerry County Development Plan refer to lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan. The wording contained in the Plan does not preclude residential development within the lifetime of the plan. I am satisfied that the lands comply with section 653B(a). I consider that the lands, zoned residential, may be available in principle for residential development during the lifetime of the current Tralee Town Development Plan if certain criteria are met, and as such are within scope.

Having regard to the foregoing and the grounds of appeal I consider that the lands zoned residential identified as land parcel ID KY0000001491, KY0000000998 under KE-C18-RZLT-1 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended, and that the appellants have not demonstrated that there are matters arising that warrant exclusion from the map.

9.0 Conclusion & Recommendation

The lands identified as land parcel ID KY0000001491, KY0000000998 under KE-C18-RZLT-1 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 KY0000001491, KY0000000998 under KE-C18-RZLT-1 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 KY0000001491, KY0000000998 under KE-C18-RZLT-1 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 within Section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax, the lands identified as land parcels ID KY0000001491, KY0000000998 under KE-C18-RZLT-1 should remain on the RZLT map.

The lands are zoned residential 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 no reason put forward as to 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.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C18-RZLT-1

Appeal by Thomas, Breda, and Mary King 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: Clash West, Tralee, 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 KY0000001491, KY0000000998 under KE-C18-RZLT-1 should remain on the RZLT map.

Reasons and Considerations

The lands identified as KE-C18-RZLT-1 (Parcel ID numbers KY0000001491, KY0000000998) located on residentially zoned lands identified within the current Tralee Town Development Plan as included within Volume 2 of the Kerry County Development Plan 2022-28 are considered in scope of Section 653B(a) of the Taxes Consolidation Act 1997. as amended. The lands are located within an established

urban area 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

2nd day of September 2024