



An  
Bord  
Pleanála

## Inspector's Report ABP-320400-24.

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### 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 Rookery Road,  
Ballycasheen, Killarney, Co. Kerry.

### Local Authority

Kerry County Council.

### Local Authority Reg. Ref.

KE-C18-RZLT-5.

### Appellant

Mark O'Leary.

### Inspector

Fergal Ó Bric.

## **1.0 Site Description**

The appeal lands are identified as KE-C18-RZLT-5 and Parcel ID number KY0000000477 (part of) and are located at Rookery Road in Ballycasheen, Killarney, Co. Kerry. The lands are stated to be located c.1km south-east of the town centre and are stated to be actively farmed by the appellant/landowner.

## **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 zoned R1 (New/Proposed Residential) and R2 Existing Residential and G3-landscape protection. The lands are identified as K-13 within the 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.

The land use zoning map also includes an indicative road alignment for the Killarney Inner Relief Road (IRR) is shown through the western portion of the lands.

### **3.0 Planning History**

The relevant planning history is considered to include the following:

PA reference number KE-C6-RZLT-28, in 2023 Kerry County Council determined that the lands should be included within the RZLT map. ABP reference 316486-23-, 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 number KY0000000477 under KE-C6-RZLT-28 on the RZLT map.

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

The appellant made a submission to the local authority seeking that his lands be excluded on the basis that the lands are identified as being integral to possible transport facility and infrastructure needs and make provision for an indicative Inner Relief Road (IRR). The submission contends that it would not be possible to develop the residential zoned lands without the indicative road being confirmed and finalised. The submission also states that the Rookery Road does not have capacity to cater for traffic associated with a large residential development of 350-430 units as envisaged for the subject lands and specifically set out within the Settlement Capacity Audit (SCA) table set out within Chapter 5, Volume 2 of the Kerry County Development Plan.

The lands are not vacant or idle and are stated to be actively farmed by the appellant. The route of the IRR cannot be determined without the consent of third party landowners that adjoin the subject lands and the crossing of the Flesk River, a Natura 2000 site which would require statutory consent. The lands should not be included within the RZLT map where the infrastructural works required to service the lands are materially significant or where a Compulsory Purchase Order (CPO) or statutory consents are required.

## **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**

The grounds of appeal are summarised as follows:

- The decision taken by Kerry County Council (KCC) did not provide a satisfactory infrastructural assessment of the appellants lands as required under section 4.1.1 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022).
- The appellants lands are designated as ‘Tier 2’ residential lands within the 2022 Kerry County Development Plan based on infrastructural deficiencies and, therefore, cannot be considered to come within scope of the RZLT.

- It is not possible to develop the lands in full without addressing traffic capacity issues as identified in the County Development Plan. The provision of the proposed inner relief road to address the issue cannot be determined without the consent of additional landowners of third-party lands that adjoin the subject site. It is not possible to incorporate the inner relief road into the lands in a piecemeal fashion as suggested by the Council's Evaluation Report.

## **7.0 Assessment**

The grounds of appeal have raised issues regarding compliance with Section 3 and 4 of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022).

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 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 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-13 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. The land use zoning map includes an indicative route alignment within the western portion of the lands. The appellant submits that the provision of the proposed road to address the issue cannot be determined without the consent of third-party landowners of lands, that adjoin the subject site. The appellant states that would not be possible to incorporate the road into the lands on a piecemeal fashion as suggested by the Council's Evaluation Report.

An indicative road traversing the western portion of the subject lands is included within the current Killarney Town Development Plan land use zoning map. This indicative alignment is exactly that and does not preclude residential development on the lands. Any proposal would need to have regard to any indicative road corridor and 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 an indicative road is not included in the criteria for exclusion under Section 653B(b) of the Taxes Consolidation Act 1997 and, therefore, the lands remain 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 are 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-5 and Parcel ID number KY0000000477 (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.

## **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-5 and Parcel ID number KY0000000477 (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.

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-5 and Parcel ID number KY0000000477 (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-5 and Parcel ID number KY0000000477 (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-5

**Appeal** Mark O Leary. 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 Kery County Council on the 26<sup>th</sup> day of June 2024 in respect of the site described below.

**Lands at:** Rookery 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 KY0000000477 (part of) under KE-C18-RZLT-5 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-5 (Parcel ID number KY0000000477-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 services 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.

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Fergal Ó Bric  
Planning Inspectorate  
3<sup>rd</sup> day of September 2024