



An
Bord
Pleanála

Inspector's Report ABP-320413-24

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 map.

Location

East End, Ballybunion, Co. Kerry.

Local Authority

Kerry County Council.

Local Authority Reg. Ref.

KE-C18-RZLT-13.

Appellant

William Gleasure.

Inspector

Fergal Ó Bric.

1.0 Site Description

The lands identified as KE-C18-RZLT-013 (land parcel ID KY0000000488-part of) are located to the south-west of the settlement of Ballybunion and within the designated settlement boundary. The lands have frontage onto the East End Road, the R551 within the designated speed control boundary.

2.0 Zoning

The Listowel Municipal District Local Area Plan 2020-2026 includes Ballybunion.

Ballybunion is designated as a District town in the Kerry settlement Hierarchy.

Part of the lands are zoned R1 New/Proposed Residential, another part zoned R2- Existing residential are also included within the RZLT map and relate to an existing dwelling. Other lands zoned R4-Strategic residential reserve and P1- Agricultural were identified on the map submitted to the Planning Authority. The Planning authority states that these lands were not include on the Draft RZLT map.

3.0 Planning History

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

4.0 Submission to the Local Authority

The appellant made a submission to the local authority seeking that his R1 and R2 residentially zoned lands be removed from the RZLT map on the basis that the land is not serviced in there is no access to water, foul sewer, surface water or electrical connections and that the wastewater treatment plant is operating at capacity. The landowner set out that there is an objective to provide a link road through the lands and that if the link road was to be developed, the site would not be wide enough to facilitate the development of dwellings.

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 lands in question are included in a local area plan and is zoned for residential development, 2. the lands are 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 lands are not serviced. They do not have access to water, wastewater, surface water or electrical services.
- It is not reasonable to consider that the lands may have access to services, even if it had access to wastewater services. It is not clear if the Milltown Wastewater Treatment Plant (WWTP) has adequate capacity to cater for residential development on these lands.
- There is an objective included within the Ballybunion land use zoning objective map to provide a link road through the lands. If the link road was to be developed, the site would not be wide enough to facilitate the development of dwellings.

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 could be connected to or able to connect to and, therefore, are in scope.
- The Local Authority submission references the planners report which includes confirmation from Uisce Eireann (UE) that connection to the public watermain and foul sewer services is possible on the public road in proximity to the lands, stated to be approximately ten metres away from the lands.
- The Planners report also referenced a roads objective included within the Ballybunion land use zoning objective map to provide a link road through the lands from the East End Road to the strategic residential reserve lands. The Planning Authority set out that an objective for an indicative road is not included in the criteria for exclusion set out within Section 653B of the Taxes Consolidation Act 1997, as amended.

8.0 Assessment

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 lands included within the RZLT map by the Planning Authority are zoned R1-New/Proposed residential and R2-Existing residential and, therefore, are within scope of Section 653B(a).

The appellant has raised the issue of access to piped services and capacity within the wastewater treatment plant to serve the lands and submit that the lands should be excluded from the RZLT map on this basis. Kerry County Council determined that the lands are in scope. Correspondence on file from UE confirms that a water main exists on the public road in close proximity to the lands and is accessible c.10 metres from the lands, adjoining the land parcel. UE have also confirmed that a foul sewer exists on the public road in close proximity (c.10 metres) to the lands. UE have not raised issue with capacity.

The provision of infrastructure to the subject lands is 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, among 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 and/or the Local Authority. Consideration has also been had to the provisions of the Residential Zoned Land Tax- Guidelines for Planning Authorities June 2022. On this basis, the land, therefore, does satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

The appellant has also raised the issue of the roads objective which is included within the Ballybunion land use zoning objective map to provide a link road through the lands from the East End Road (R551) to the north of the lands and would connect to the strategic residential reserve lands (R4 zoned lands), south of the R1 and R2 zoned lands. An indicative road traversing the subject lands is included within the current Ballybunion 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 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.

I note that the inclusion of an objective for an indicative road is not included within the criteria for exclusion set out under Section 653B of the Taxes Consolidation Act 1997, as amended. 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 R1 and R2 residential identified as land parcel ID number KY0000000488 under KE-C18-RZLT-13 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 identified as land parcel ID number KY0000000488 (part of) under KE-C18-RZLT-13 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 parcel ID number KY0000000488 (part of) under KE-C18-RZLT-13 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 parcel ID number KY0000000488 (part of) under KE-C18-RZLT-13 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 in Section 3.1.2 of the 2022 Guidelines for Planning Authorities on the Residential Zoned Land Tax, the lands identified as land parcel ID number KY0000000488 (part of) under KE-C18-RZLT-13 should remain on the RZLT map.

The lands are 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.

11.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C18-RZLT-13

Appeal by William Gleasure 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 26th day of June 2024 in respect of the site described below.

Lands at: East End, Ballybunion, 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 KY0000000488 (part of) under KE-C18-RZLT-13 should remain on the RZLT map.

Reasons and Considerations.

The lands identified as KE-C18-RZLT-13 (Parcel ID number KY0000000488-part of) located on residentially zoned lands identified within the current Ballybunion Local Area 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
3rd day of September 2024