Inspector’s Report
ABP-323237-25

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	Carrigeendaniel, Tralee Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C40-RZLT-23.
Appellant	Chris Murray & Deirdre McElligott.
Inspector	Fergal Ó Bric

1.0 Site Description

The lands identified as KE-C40-RZLT-23 and include land parcel ID number KY0000001485 are located at Carrigeendaniel, Tralee, Co. Kerry, to the north-west of the town and west of the R551, the Caherslee Road along the Wild Atlantic Way (WAW). The lands comprise an area of approximately 2.34 hectares.

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. Residential lands in Tralee and Killarney are phased 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. The lands are designated as Tier 1 in the Tier Phasing Map for Tralee which shows Tier 1 and Tier 2 lands in Tralee as part to the Settlement Capacity Audit (SCA). The SCA sets out that the lands are accessible by road, have access to public roads and streetlighting and access to public watermains and foul sewer. The lands are stated to have a potential residential yield of between 45 and 55 residential units as per the SCA.

3.0 Planning History

Bord reference PL81 205062-IN 2004, the Board refused planning permission for a housing development of 23 dwellings on the lands for reasons of being premature pending the preparation of an action area plan including a roads layout for the entire area and the quality of the public open space provision.

I note that the Local Authority state that the subject lands were included in the final RZLT map in 2024 and the final RZLT map in 2025 published on the 31st day of January 2025. I am not aware of a planning appeal having been received in relation to the inclusion of the subject lands on the historic RZLT maps.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority setting out the following:

- The lands are currently held as part of a trust,
- The lands are not directly abutted by public services such as roads and sewage networks. Therefore, they are not considered as serviced lands,
- Under An Bord Pleanála reference PL81.205062- planning permission was refused for a housing development on the lands for reasons of insufficient access.
- Kerry County Council have failed to deliver an 'indicative' road to the north of the subject lands as detailed within the Tralee Town Zoning map, which would provide the required road access to the subject lands.
- The landowner to the north has refused a right of way to the appellants to allow access through their lands.
- A public storm sewer is not currently accessible to the subject lands and UE no longer permit stormwater to enter the wastewater network.
- No agreements exist for access to public services over the various third-party lands to the north, south, east or west of the subject lands.
- Therefore, it is not 'reasonable to consider 'that the lands may have access or be connected to public infrastructure.
- As per Government guidance 'if the works required to connect the lands to services are materially significant, including requiring access to third party lands in private ownership, …the lands should be considered 'out of scope'.

Further information was submitted to the Local Authority in relation to the following matters:

- Land folio and ownership details

5.0 Determination by the Local Authority

The local authority by order dated 27th day of June 2025 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 lands are currently held as part of a trust,
- The lands are not directly abutted by public services such as roads and sewage networks. Therefore, they are not considered to constitute serviced lands,
- Under An Bord Pleanála reference PL81.205062- planning permission was refused for a housing development on the lands for reasons of insufficient access.
- Kerry County Council have failed to deliver an 'indicative' road to the north of the subject lands as detailed within the Tralee Town Zoning map, which would provide the required road access to the subject lands.
- The landowner to the north has refused a right of way to the appellants to allow access through their lands.

- A public storm sewer is not currently accessible to the subject lands and UE no longer permit stormwater to enter the wastewater network.
- No agreements exist for access to public services over the various third-party lands to the north, south, east or west of the subject lands.
- Therefore, it is not ‘reasonable to consider ’that the lands may have access or be connected to public infrastructure.
- As per Government guidance ‘if the works required to connect the lands to services are materially significant, including requiring access to third party lands in private ownership, …the lands should be considered ‘out of scope’.

7.0 Local Authority Submission

- The relevant Development Plan is the current Kerry County Development Plan 2022-2028.
- The planning application referenced by the appellants was decided upon in 2004, over twenty years ago.
- An indicative road is not included in the criteria for the exclusion of lands under Section 653B of the Taxes Consolidation Act 1997.
- The development of the subject lands is not precluded by the indicative road or dependent upon it.
- It is possible to access the subject lands from the adjoining residential development to the east, Páirc na Dún, which has been taken in charge by Kerry County Council.
- It is considered that the site fulfils the criteria for inclusion on the map ass et out under Section 653B of the Taxes Consolidation Act 1997.
- Uisce Eireann (UE) have confirmed in writing that the subject lands are serviceable.

8.0 **Assessment**

Under Section 653J of the Taxes Consolidation Act 1997 (as amended) the role of the Coimisiún 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 Comisiún 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 Coimisiún 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 R1 residential within the current Tralee Town Plan as set out within volume 2 within the Kerry CDP 2022 and, therefore, are within scope of Section 653B(a)(i) of the Taxes Consolidation Act 1997 as amended.

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 T2 in the Settlement Capacity Audit and designated as Tier 1 serviced residential 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. I consider, therefore, the lands are within scope of section 653B(a)(i) of the Taxes Consolidation Act 1997 as amended.

Section 653B (b) of the Taxes Consolidation Act 1997 as amended, specifically addresses the issue of connection to public infrastructure and states 'It is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity for such development'.

The appellant submits that it would not be possible to develop the lands in full without addressing access issues as identified in the County Development Plan. The land use zoning map includes an indicative route alignment within the lands immediately north of the subject lands and within third party ownership, but outside of the subject lands. The appellants submit that the provision of the proposed road to address the issue of access to their lands has not been progressed to date by Kerry County Council. The appellants state that would not be possible to develop their lands in the absence of this distributor road being constructed.

The appellants submit that it would not be possible to develop their lands without addressing the issue of access to their lands. The land use zoning map includes an indicative route alignment within the lands immediately north of and contiguous to the subject lands. The appellants submit that the provision of the indicative distributor road to address the access issue cannot be determined without the consent of third-party landowners of lands, that adjoin the subject site. The appellants state that the landowner to the north is not willing to provide a right of way as an access to the subject lands to allow for their development. The appellants failed to reference or consider the possibility of access to the subject lands from the east via the adjoining Páirc na Dún residential development.

An indicative road traversing the lands immediately north of the subject lands is included within the current Tralee Town Development Plan land use zoning map. This indicative alignment is exactly that and does not preclude residential development on the lands. Any proposal should 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 land remains in scope and this ground of appeal relating to this matter should be set aside.

I note from the correspondence submitted by Uisce Eireann (UE) to the PA (dated April 2025) which confirms that the subject lands are serviceable and that the capacity registers are green for both water supply and wastewater treatment. They also state that water mains and foul sewers exist within the public road at Páirc na Dún in close proximity to the site. A UE GIS map confirms the existence of public water services within the Páirc na Dún residential development located immediately adjoining and east of the subject lands.

I have consulted with the UE capacity register Kerry | Water Supply Capacity Register | Uisce Éireann (formerly Irish Water) which was published in August 2025 and this sets out that the wastewater and water supply capacities are 'Green' albeit that the water supply requires a 'level of service' (LoS) improvement.

I also note from the correspondence submitted by Kerry County Council (email dated 19th June 2025) where it is stated that the Páirc na Dún residential development was taken in charge by Kerry County Council in 2013.

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 on lands under 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

Having regard to the foregoing. I consider that the lands zoned residential identified as KE-C40-RZLT-23 and Parcel ID number KY000001485 meet the qualifying criteria set out in section 653B (b) of the Taxes Consolidation Act 1997, as amended, and that there are no matters arising that warrant exclusion from the map.

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. The role of An Bord Pleanála in this instance is restricted to considering compliance with the qualifying criteria set out in Section 653B. The issuing of planning permission is not a reason for exclusion as set out within Section 653B (c) of the Taxes Consolidation Act 1997, as amended.

The appellants state within their appeal submission that the lands are being held ‘in trust’. However, this does not qualify for excluding the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
Having regard to the foregoing and the grounds of appeal I consider that the lands zoned residential identified as land parcel ID KY0000001485 under KE-C40-RZLT-23 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 KY0000001485 under KE-C40-RZLT-23 are located on residentially zoned lands within an established urban area with services available and no capacity or other reasons have been identified as set out with the written correspondence made by Uisce Eireann to the Local Authority, 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 land parcel ID KY0000001485 under KE-C40-RZLT-23 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 Coimisiún confirm the determination of the local authority and direct the local authority to retain the lands identified as land parcel ID KY0000001485 under KE-C40-RZLT-23 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 (b) 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 parcel ID KY0000001485 under KE-C40-RZLT-23 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 serviceable, 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 Coimisiún Order

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C40-RZLT-23

Appeal by Chris Murray and Deirdre McElliogott 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 27th day of June 2025 in respect of the site described below.

Lands at: Carrigeendaniel, Tralee, Co. Kerry

Decision

The Coimisiún 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 Coimisiún confirms the determination of the local authority and direct the Local Authority to retain the lands identified as Parcel ID KY0000001485 under KE-C40-RZLT-23 should remain on the RZLT map.

Reasons and Considerations

The lands identified as KE-C40-RZLT-23 (Parcel ID number KY0000001485) located on residentially zoned lands identified within the current Tralee Town Development Plan as included within Volume 2 of the Kerry County Development Pan 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

15th day of October 2025