Inspector’s Report
ABP-323244-25

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
Location	Lands at Ballycasheen, Killarney, Co. Kerry.
Local Authority	Kerry County Council.
Local Authority Reg. Ref.	KE-C40-RZLT-15.
Appellant	Mark O’Leary.
Inspector	Fergal Ó Bric.

1.0 Site Description

The appeal lands are identified as KE-C40-RZLT-15 and Parcel ID number KY0000000477 (part of) and are located on the eastern side of the Rookery Road in Ballycasheen, Killarney, Co. Kerry. The lands are located approximately one kilometre 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.

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 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. 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.

Killarney is identified as a key town in the Regional Social Economic Strategy (RSES) for the southwest region.

The subject lands have the benefit of three land use zoning objectives, R1 (New/Proposed Residential), 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.

Objective KA-81 in relation to the provision of an Inner Relief Road linking Bohereen na Goun and Monsignor O Flaherty Road is included within the Plan and indicatively would traverse the western portion of the subject lands.

3.0 Planning History

The relevant planning history is considered to include the following:

Planning Authority reference 18/745-Mark O Leary was granted planning permission

In 2018 to construct a two-storey detached dwelling, vehicular entrance, proprietary

wastewater treatment system and percolation area.

PA reference number KE-C18-RZLT-5., in 2024 Kerry County Council determined that the lands should be included within the RZLT map. ABP reference 320400-24, in 2024, 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 (part of) under KE-C18-RZLT-5 on the RZLT map.

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 (part of) 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 for the provision of an indicative Inner Relief Road (IRR). The submission contends that it would not be possible to develop the residential zoned lands without the route of the IRR 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. This scale of development is envisaged for the subject lands as set out within the Settlement Capacity Audit (SCA) table set out within Chapter 6, 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 part landowners that adjoin the subject lands, including a crossing of the rail line north of the site and a crossing of the Flesk River south of the site, a Natura 2000 site which would both 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 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 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,

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 appellant states that he is a full-time dairy farmer. The lands incorporate an active farmyard and farm buildings as well as his private dwelling house.
- Section 2.11.3 of the Kerry Development Plan provides for the completion if the Inner Relief Road linking Bohereen na Goun with Monsignor O Flaherty Road, part of which traverses the subject lands, between the Flesk River and the rail line.
- There is uncertainty over this piece of roads infrastructure, as the works required to construct the IRR would be subject to potential impacts on the Flesk river Natura 2000 site.
- The upgrading of roads infrastructure, including works over third-party lands in public or private ownership involving alterations to a bridge junction over the railway line as well as crossing the river Flesk, where statutory consents are required and the RZLT Guidelines set out that such lands should not be included in scope.
- Kerry County Council have failed to actively engage on progressing the indicative road since 2018 and therefore, should er the responsibility for the delay in developing the subject residentially zoned lands.
- The subject land could not be developed in advance of the design/delivery of this indicative public inner relief road. It is not possible to incorporate the inner relief road into the lands in a piecemeal fashion as suggested within the Council's Evaluation Report.
- The lands are zoned as Tier 2 residential, meaning that the lands are not currently sufficiently serviced to support new residential development.

- 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. The lands are not currently sufficiently serviced to support new residential development.

7.0 **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 Comisiún 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. The PA set out that 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 and 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)(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 the absence of the design and/or delivery of the section of the Inner Relief Road (IRR) that traverses the subject lands. 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 in a piecemeal fashion as suggested within 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. This indicative alignment is exactly that, and it 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 lands remain in scope and the grounds of appeal relating to this matter should be set aside.

I note that the Kerry County Council states that the subject lands have direct access onto two public roads, Countess Road, and Rookery Road where there are public footpaths and streetlighting and a watermain and foul sewer along both of these roads. The Local Authority therefore considered the lands to be in scope under Section 653B(b) of the Taxes Consolidation Act 1997

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. On this basis, the land, therefore, satisfies the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended and these grounds of appeal should be dismissed.

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 fact that the lands are in active and established agricultural use does not qualify for excluding the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended., nor does the question of viability as a consequence of the application of the RZLT to the lands

Having regard to the foregoing. I consider that the lands zoned residential identified as KE-C40-RZLT-15 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 on residentially zoned lands 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-C40-RZLT-15 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 Coimisiún confirm the determination of the local authority and direct the local authority to retain the lands identified as KE-C40-RZLT-15 and Parcel ID number KY0000000477 (part of) on the map.

10.0 **Reasons and Considerations**.

The lands located within an established urban area on residentially zoned lands 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-C40-RZLT-15 and Parcel ID number KY0000000477 (part of) 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.

11.0 **Recommended Draft Comisiún Order**

Taxes Consolidation Act 1997 as amended.

Planning Authority: Kerry County Council

Local Authority Reference Number: KE-C40-RZLT-15

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 Kerry County Council on the 27th day of June 2025 **i**n respect of the site described below.

Lands at: Ballycasheen, 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 Coimisiún 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-C40-RZLT-15 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-C40-RZLT-15 (Parcel ID number KY0000000477-part of) located within an established urban area 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.

Fergal Ó Bric
Planning Inspectorate

15th day of October 2025