



An
Bord
Pleanála

Inspector's Report ABP-316324-23.

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	Upper Rosses, Rosses Point, Co. Sligo
Sligo	Sligo County Council.
Local Authority Reg. Ref.	RZLT 24
Appellant	Clodagh Conway
Inspector	Dáire McDevitt

1.0 Site Description

The appeal lands (RZLT24) are located at Upper Rosses, Rosses Point in county Sligo, The lands which are the subject of this appeal are located north of the public road (L331).

2.0 Zoning

As per notices on the Sligo County Council website (updated 14 April 2021) “The Sligo and Environs Development Plan 2010-2016 (SEDP) was adopted in November 2009 and was due to expire in 2015. When Sligo Borough Council was abolished in 2014, the lifetime of the SEDP was automatically extended in accordance with the legislation. In August 2017, the provisions of the SEDP were further extended through incorporation into the Sligo County Development Plan 2017-2023 (CDP)”. The Sligo County Development Plan 2017-2023 has been extended to July 2024.

Volume 2 contains Mini Plans. 31. Rosses Point Mini Plan applies to the appeal lands.

Rosses Point is identified as a village sustaining the rural community. The front portion of the lands which are the subject of this appeal are zoned ‘Residential Uses’. The rear (northern portion) is not located on lands included in the Rosses Point Mini Plan development boundary and does not have a zoning attached to it.

3.0 Planning History

None stated.

4.0 Submission to the Local Authority

The appellant made a submission to the Local Authority seeking to have her lands removed from the draft map on the basis that the land is not serviced and cannot be connected to services. This is principally due to lack of footpath to the site front to connect to footpath network. And that the relevant date for inclusion in the draft plan

is incorrect. This is due to the village being unserved until foul water network improvement are completed in the area.

5.0 Determination by the Local Authority

The local authority determined that the land should be retained on the RZLT Draft Map as it was in scope and should remain on the map as 1) it is included in a development plan/local area plan and is zoned for residential development or a mixture of uses, that includes residential, 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

- Failure to correctly apply section 653B of the Tax Consolidation Act 1997 as amended. The land is not connected to footpath access and cannot be connected to a footpath access. There is no objective to provide a footpath in the Rosses Point Plan. The road is too narrow to provide a footpath.
- Error on face of planning assessment. Decision is ultra vires the legislation. The planning authority in its assessment introduced a concept that is not in the legislation by referring to the lack of footpaths to the site frontage or within the vicinity as not uncommon within this settlement given its scale and pattern of development and did not allow the landowner to make a submission on this aspect which is contrary to the principles of natural justice. The RZLT legislation is clear in asking whether or not land is serviced or serviceable by footpath infrastructure.
- The absence of footpaths is a planning consideration in residential development supported by precedent Board decisions.

- Development on the site is premature the mandatory provision of the Rosses Point Plan in relation to the requirement for a Masterplan and a coherent traffic management plan.
- Foul sewer drainage – date of inclusion on which a site first satisfied the relevant criteria.
- It is the appellants contention that that Sligo County Council have not properly applied section 653E, TCA by determining that the site should be included/retained on map.

7.0 Assessment

While not raised in the grounds of appeal I note that southern portion of the lands are zoned ‘residential uses.’ In this regard I am satisfied that this portion of the lands fall within the scope of section 653B(a). The northern portion refers to lands that are outside the development boundary of Rosses Point as set out in the Rosses Point Mini Plan and as such do not fall within the scope of section 653B(a) and should be removed from the map.

The grounds of appeal set out that the lands should be excluded as the lands identified are not serviced by footpath or foul sewer due to lack of capacity.

Pg. 24 of the RZLT guidelines state:

If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope.

The provision of infrastructure to the subject lands are considered to be in the control of Sligo County Council and Uisce Eireann and it is determination of the local authority that the subject lands are in scope and therefore retained within the RZLT Final Map.

With regard to the provision of footpaths, I note that the local authority in their Submission Assessment dated 20th March 2023 state “while there is no dedicated footpath to the site frontage or within the immediate vicinity of the site this is not uncommon within this settlement given its scale and pattern of development.” I note that the site is bounded by two roads and in principle the site could be served by

public paths subject to the relevant consents. For the purposes of falling within the scope of RZLT the criteria is whether it to 'is reasonable to consider'. The lands are located along the L331, this road while located within the development boundary of Rosses Point has no footpaths. The closest footpaths are located c.380m from the site to the east. Taking a strict interpretation of the criteria set out under Section 653B there is no discretion in the legislation for zoned lands that are not served by public footpaths for their inclusion under section 653B(b). The land is not connected to the existing footpath network in Rosses Point and would require the provision of significant sections of new footpath across other landholdings along the L331 where land is not in the control of the landowner or local authority. The land, therefore, does not satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

There is no correspondence on file from Uisce Éireann. Whilst infrastructure elements/connection may not be in place at present, these would be expected to be provided in conjunction with the development of a site, generally developer led. Issues relating to capacity have been raised by the appellant. And that the relevant date for inclusion in the draft plan is incorrect. This is due to the village being unserved until foul water network improvement are completed in the area.

The local authority in their Submission Assessment dated 20th March 2023 state that "The Irish Water RAG identifies that there is 'spare capacity available' for wastewater/water supply for these lands and at the necessary date. It is understood that this is without completion of the works to provide further enhancement works to improve wastewater treatment within the settlement and which are currently being progressed." Based on the information available I have no evidence to dispute this matter and the ground of appeal relating to this matter should be dismissed.

With regard the requirement to prepare a Masterplan and a Traffic Management Plan as set out in the Rosses Point Mini Plan. The requirement for a Masterplan or a Traffic Management Plan to be prepared is not included in the criteria for exclusion as set out under section 353B, as such I consider that this ground of appeal dismissed.

Having regard to the foregoing I do not consider that the lands identified as RZLT 25 meet the qualifying criteria set out in section 653B of the Taxes and consolidation Act 1997, as amended and therefore should be removed from the map.

Conclusion

The northern portion the lands identified under RZLT 24 refer to lands that are outside the development boundary of Rosses Point as set out in the Rosses Point Mini Plan and as such do not fall within the scope of section 653B(a) and should be removed from the map.

Regarding the remainder of the land identified under RZLT 24 which is zoned for Residential Uses. I consider, having reviewed the documentation on file, submissions and grounds of appeal, that the lands identified as RZLT 24 do not meet the qualifying criteria set out in section 653B of the Taxes and consolidation Act 1997, as amended, and therefore should be removed from the map.

8.0 Recommendation

I recommend that the board dismiss the determination of the local authority and direct the local authority to remove the land identified as RZLT24 from the map.

9.0 Reasons and Considerations

The northern portion the lands identified under RZLT 24 refer to lands that are outside the development boundary of Rosses Point as set out in the Rosses Point Mini Plan and as such does not fall within the scope of section 653B(a) and should be removed from the map.

The remainder of land identified as RZLT 24 which is zoned for Residential Uses is not connected to the existing footpath network and would require the provision of significant sections of new footpath across other landholdings along the L331 where land is not in the control of the landowner or local authority. The land, therefore, does not satisfy the criteria cited in section 653B(b) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my profession 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.

Dáire McDevitt
Senior Planning Inspector
21st June 2023