



An
Bord
Pleanála

Inspector's Report

ABP-316353-23

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	Water Rock, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT473188915
Appellant(s)	Edgefield Property Investment Ltd.
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The appeal relates to 3 parcels of land within the same landownership and situated adjacent to each other. The first is identified by land parcel ID no. MD- RAP-22 and to the south of this is the second parcel ID no. MD-RFAP-23. These parcels are situated to the rear of one-off housing on Castle Rock Avenue, with the second parcel having frontage onto that road, as well as Ballyrichard More road to the south. The third land parcel is identified by parcel ID no. MD-RFAP-9 and is situated to the south, and on the opposite side of Ballyrichard More, to parcel MD-RFAP-23. The third parcel has frontage onto Castel Rock Avenue and Ballyrichard More road. The sites are greenfield in character. To the east, west and north of the sites is agricultural/greenfield areas, with one-off housing also located to the north and south.

2.0 Zoning and other provisions

- 2.1. The sites are zoned MD-RAP-22, MD-RFAP-23 and MD-RFAP-09 ‘Residential’ under the Cork County Development Plan 2022-2028.
- 2.2. Volume 4 ‘South Cork’ of the Development Plan describes the Objective for MD-RAP-22 as follows:
- “Medium A Density residential development to include a mix of house types. The layout shall allow for permeability between housing areas for pedestrians and cyclists. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.3.5 and 4.3.6.*”*
- 2.3. The Objective for MD-RFAP-23 is as follows:
- “Medium A Density residential development to include a mix of house types. The layout shall allow for permeability between housing areas for pedestrians and cyclists. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.3.5 and 4.3.6.*”*
- 2.4. The Objective for MD-RAP-09 is as follows:
- “Medium B density residential development to include a mix of house types. The layout shall allow for permeability between housing areas and in particular direct,*

safe and convenient access to the proposed railway stop at Water-Rock by pedestrians and cyclists. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.3.5 and 4.3.6.”*

* Flood Risk.

2.5. Table 4.3.5 of the Plan identifies the MD-RAP-22 as being in ‘delivery bundle B’ and MD-RFAP-23 and MD-RFAP-09 as being in ‘delivery bundle C’.

2.6. Text below the table states:

“Note no 1. Development of zones linked to Infrastructure Bundles B & C may commence in parallel with the delivery of infrastructure Bundle A if the following can be secured:

- Landowners with lands in multiple bundles must build out their bundles in sequence, e.g. A to B to C.*
- Appropriate connections to water services infrastructure and surface management systems; and*
- Relevant on/off site road infrastructure.”*

3.0 Planning History

3.1. No relevant planning history on the site(s).

3.2. Residential Planning Approvals in the wider Midleton Area:

- 22/5104 (25 units) - The Fairways, Tir Cluain, Knockgriffin, Broomfield West, Midleton, approved by Cork County Council on 24/08/2022.
- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.
- 21/7264 (284 units) – Lands at Knockgriffin (Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.
- 21/7265 (434 units) – Knockgriffin (Imokilly), Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.

- 22/4753 (99 units) – Lakeview, Castleredmond, Midleton, approved by Cork County Council on 31/05/2022.
- 21/7428 (97 units) – Lakeview, Castleredmond, Midleton, approved by Cork County Council on 26/05/2022.

4.0 Submission to the Local Authority

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. It stated that:

- The lands do not have access to much of the infrastructure necessary for dwellings to be developed i.e. there are no roads, footpaths, storm or foul sewers serving these lands.
- The 3 no. specific zoning objectives on the lands all require the provision of infrastructure, which includes water supply, storm and foul sewers (including pumping stations and rising mains) roads, footpaths, cycle lanes and public lighting – this is to be provided prior to lands being developed.
- Responsibility for the delivery of the infrastructure necessary for the lands to be developed is spread across a number of bodies/entities, including Irish Water and Cork County Council and is therefore outside of the landowner control.
- There is no definitive timeframe available for the delivery of this infrastructure.
- Table 4.3.5 of the CDP states that the lands at MD-RAP-22 should be developed prior to MD-RFAP-09 and MD-RFAP-23.

5.0 Determination by the Local Authority

5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- Uisce Eireann confirm that Waste Water capacity will be available to facilitate development in 2023. In addition, if required, developer led infrastructure will be considered as an interim measure. A number of recent planning consents have been permitted in Water-Rock including 22/5839, 21/7265, 21/7264.

5.2. The local authority determined that the site was in scope and should remain on the map.

5.3. Uisce Éireann's Response to the RZLT Query confirmed the following:

- With respect to Water Networks: a water main exists on the public road 2m away via L3618 adjoining the lands.
- With respect to Wastewater Networks: a collection network is not available in close proximity to the development lands. The closest wastewater collection network is 1300m away in the public road L3656. The sewer is accessible via the public road and third party lands.
- Other – Wastewater Treatment Plant Capacity: As of 1st October, Midleton Wastewater Treatment Plant has no spare capacity to cater for additional development. UÉ is currently progressing projects to provide additional wastewater treatment capacity. Midleton WWTP Optimisation Project will increase capacity to 18,600 PE. The current forecast date for the delivery of this project is 2026 (timeframes subject to all necessary consents and approvals). In the interim, other projects are proposed to provide wastewater treatment capacity including:-
 - (a) Phase 1 – Load diversion to Carrigtwohill project which will pump effluent from the north side of Water Rock to Carrigtwohill – due for completion in 2023 (timeframes subject to all necessary consents and approvals), and
 - (b) Phase 2 – Load Diversion to Carrigtwohill project which will transfer the loading from a large portion of the town to Carrigtwohill – due for completion in 2026 (timeframes subject to all necessary consents and approvals).

Connections may be considered following the completion of the Phase 1 project above.

6.0 The Appeal

6.1. Grounds of Appeal

- The decision taken by Cork County Council did not provide a satisfactory infrastructural assessment of the lands as required in the RZLT Guidelines;
- Uisce Éireann have responsibility for the delivery of the public wastewater infrastructure necessary for the lands to be developed. Therefore, the development of these lands is outside of the landowner control;
- Cork County Council have responsibility for providing high quality access roads, public footpaths, cycle lanes and public lighting necessary for the lands to be developed.
- While measures are being put in place to provide the necessary infrastructure to service the area, there is no definitive timeframe available for the delivery of this infrastructure.
- The Council are suggesting that these lands could be serviced through the delivery of Developer Provided Infrastructure and as a result, the lands should remain within the RZLT, this is an inappropriate stance to provide an 'interim solution' to a significant issue and not in accordance with the Act or Guidelines, which require access to public infrastructure including roads, footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, with sufficient service capacity.
- The legislation cannot be interpreted in a way which suggests that land is deemed to be currently connected on the basis of future infrastructure.
- Section 4.2.2 of the Guidelines state that while the aim of the tax is to activate land 'this should not result in land being considered in scope for the tax where significant works are required to enable connection to services which are outside of the control of the applicant or the relevant planning authority to enable.'

7.0 Local Authority Response

- Reference to a number of residential planning consents within the Water-Rock UEA in the past year: Ref. no.'s 22/5104 (25 units); 22/5839 (400 units); 21/7264 (284 units); and 21/7265 (434 units) (currently subject to appeal

ABP-314787-22). As well as pending application ref. no. 22/6627 subject to further information request. *[NB all appeals withdrawn]*.

- UÉ confirms that a water main exists on the public road. Wastewater capacity is currently being upgraded to serve Midleton. This wastewater upgrade plan consists of a medium term solution and interim solution – with delivery of the interim project in 2023.
- However, Cork County Council continues to grant consent for residential development at Water-Rock with a further interim solution of developer provided infrastructure being permitted to facilitate immediate activation. For example, under 22/5104 Consent Conditions 2, 3 and 4 allow for use of a temporary wastewater treatment unit that is to be decommissioned on delivery of upgraded facilities by UÉ.
- With regard to road access, particularly via the Water-Rock Road, Cork County Council acknowledges that the upgrade of the Water-Rock Road is required to facilitate the development of the subject lands. However, the Council has secured Part 8 planning consent for the upgrade of the Water-Rock Road and is currently finalising the detailed design; the Council has already acquired some of the lands required to under the road upgrade works and is currently in the process of acquiring more lands with a view to concluding the overall land acquisition for the Water Rock Road Upgrade works by 2024.
- Solutions relating to wastewater as set out above have also been utilised by Cork County Council at Ballinglanna in Midleton (Ref. no. 22/4753 – 99 units and 21/7428 – 97 units) consent granted on the basis of a temporary wastewater treatment unit to be decommissioned on delivery of upgraded facilities by UÉ.
- Reference to pages 7 and 8 of the RZLT Guidelines, specifically ‘A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.’

- Cork County Council considers that it is ‘reasonable to consider’ the subject site ‘may have access’ to the required public infrastructure as set out in the Act on January 1st 2022.

8.0 Assessment

- 8.1. The grounds of appeal raise the matter of wastewater infrastructure capacity. Uisce Éireann’s wastewater treatment capacity register identifies that Midleton wastewater treatment plant (WWTP) has a ‘Red’ capacity level, indicating no spare capacity at present. The response from Uisce Éireann to the Local Authority, states that there is no spare capacity at the Midleton WWTP to cater for additional development. Projects to provide capacity are identified under two phases, the first of which comprises a load diversion to Carrigtwohill from the northside of Water Rock due for completion in 2023 (phase 1), and the second being the transfer of loading from a large portion of the town to Carrigtwohill due for completion in 2026 (phase 2). The appellant includes a copy of a pre-connection enquiry to Uisce Éireann which confirms that wastewater connection is not feasible without infrastructure upgrade by Irish Water, and that additional capacity to become available in 2023 will be distributed on a first come first served basis.
- 8.2. I note that the Council have based their conclusion that the site can be serviced by wastewater infrastructure upon Uisce Éireann’s confirmation (dated January 2023) that first phase works to divert loading to Carrigtwohill WWTP will be completed in 2023.
- 8.3. While Midleton WWTP is categorised as ‘Red’ with no capacity, Uisce Éireann (UÉ) has identified that in 2023 phase 1 improvement works will provide additional wastewater treatment capacity to the area via Carrigtwohill WWTP. This is in the form of a load diversion to Carrigtwohill, pumping effluent from the north side of Water Rock to Carrigtwohill.
- 8.4. Section 653B, of the Taxes Consolidation Act 1997 as amended, states that for lands to be included on the map:

“(b) 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 available for such development.”

- 8.5. The Act therefore asks that service capacity is available for development. Page 27 of the RZLT Guidelines expands upon this and sets out a ‘Serviced Land Definition’ on page 8 of the Guidelines, “...A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to **exist**.” The definition also states that “Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of **existing capacity** in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022.”
- 8.6. I agree with the Local Authority that the phase 1 works to divert loading to Carrigtwohill WWTP will provide additional capacity to serve development in the area and this is due for completion in 2023. However, the response from Uisce Éireann does not confirm that this capacity is in place as existing provision. The RZLT Guidelines are clear that the identification of wastewater treatment capacity concerns existing provision. As the potential for development of the subject site would be upon the basis of works to improve capacity (forming a diversion of loading to Carrigtwohill WWTP categorised as ‘Green’), I am not satisfied that the subject site can be concluded to benefit from existing wastewater treatment infrastructure capacity, with Midleton WWTP categorised as ‘Red’, meaning no capacity, and with no confirmation that there is a current diversion to Carrigtwohill WWTP in place thereby freeing up capacity at Midleton. As a result, the subject site is not in scope for the RZLT Maps, in light of existing wastewater treatment capacity to serve the site.
- 8.7. It should be noted that largescale residential development (LRD) planning applications have been approved in Midleton, on the basis that capacity will be available to serve proposed development following planned infrastructure upgrades; with confirmation of feasibility issued based on planned upgrades. The requirement for LRDs under the Planning and Development Act (as amended 2021), is for “evidence that Irish Water has confirmed that it is feasible to provide the appropriate service or services and that the relevant network or networks have the capacity to service the proposed development” (section 32B(e)). The capacity of the Carrigtwohill WWTP was considered sufficient in that regard, with proposals to

connect to Carrigtwohill WWTP for those individual applications in discussion with UÉ. Proposals have also included temporary wastewater treatment units to be decommissioned on delivery of upgraded facilities by UÉ, as confirmed in the Local Authority response to the appeal. This requirement is distinct from the requirement set out for inclusion for the RZLT which is that service capacity is 'available' for development, with the RZLT Guidelines stating the need for 'existing' capacity. The reliance upon the delivery of a project in 2023 (subject to change) to divert effluent to Carrigtwohill WWTP, or the inclusion of developer-led temporary solutions, is outside of the scope of the RZLT in this sense. However, this does not mean that individual planning applications cannot propose solutions in discussion with UÉ as demonstrated by the planning approvals in the area (see planning history in section 3 above).

- 8.8. The appeal grounds also raise the lack of servicing with respect to water, sewerage and roads/footpaths. The response from UÉ confirms that water connection is available in close proximity via the public road. With respect to wastewater, the collection network is not available in close proximity to the development lands, and is 1300m away via the public road or third party lands. The RZLT Guidelines state on page 25 with respect to foul sewerage drainage that:

“Consideration of connections which would require more significant works should take into account whether the land required to deliver the works is in the control of the applicant or the local authority, as set out above.”

- 8.9. The preceding text in the guidelines clarifies that connection to services that require access to 3rd party lands may be considered out of scope. The distance of 1300m is also significant, even if via the public road. This coupled with the capacity wastewater capacity constraints, also indicates the inability to currently service the site.
- 8.10. In respect of road and pedestrian infrastructure, sufficient infrastructure can be easily connected to via Ballyrichard More road.
- 8.11. In conclusion, for the purposes of the RZLT and with reference to the applicable legislation and guidance for the RZLT, the site is not served by existing wastewater treatment capacity; and would require significant works to connect to foul drainage networks. As such, the site cannot be considered to fall within scope of the RZLT

which under section 653B(b) requires that it is reasonable to consider that a site may have access to public infrastructure.

9.0 Recommendation

- 9.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

10.0 Reasons and Considerations

- 10.1. 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 Section 4.1.1 (iii) of the RZLT Guidelines; existing wastewater treatment infrastructure capacity to serve the site has not been demonstrated. In addition, connection to foul water networks would require significant works. As such the site cannot be considered in-scope for the RZLT.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Rachel Gleave O'Connor
Senior Planning Inspector

18 August 2023