



An
Bord
Pleanála

Inspector's Report

ABP-316393-23

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| 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 | Castleredmond, Co. Cork |
| Planning Authority | Cork County Council |
| Planning Authority Reg. Ref. | DRZLT472767862 |
| Appellant(s) | Glenveagh Homes Limited |
| Inspector | Rachel Gleave O'Connor |

1.0 Site Location and Description

- 1.1. The site is located to the east of existing residential estates at The Courtyard and Woodberry Lawn. To the north, east and south of the site there is agricultural/greenfield lands, as well as occasional one-off housing.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Residential' under the Cork County Development Plan 2022-2028. Identified as part of a larger land parcel ID MD-R-04 in the plan.

3.0 Planning History

- 3.1. Reg. Ref. 235093 – Cork County Council Received an Application for Large Scale Residential Development (LRD) on the site on 30th May 2023. The application status is recorded as 'INCOMPLETED'. The application is for the demolition of the existing wall into the Castleredmond estate and the construction of 270 no. residential units, 43 no. garden sheds, 1 no. creche, 3 no. ESB substations, a temporary wastewater treatment plant, 1 no. temporary pumping station and all associated development works including footpaths, parking, drainage, bicycle and bin stores and landscaping/amenity areas at Castleredmond (townland), Midleton, Co.Cork. Access will be via the existing Castleredmond entrance and the new entrance permitted under ref. no. 21/7428 onto the R630.
- 3.2. Reg. Ref. 079456 – Planning Permission REFUSED 3rd September 2007 for Residential development of 250 residential units and creche consisting of 146 no. houses and 104 no. apartments in 10 no. 3 storey structures and 6 no. 2 storey structures, 1 no. playing pitch, ancillary recreational facilities and associated site works and services and amendments to the N25 Lakeview roundabout. No records available to view online.
- 3.3. 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- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.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:

- Development of the site is constrained by both a lack of public road access to the site and wastewater capacity issues.
- The roads in close proximity to the site are not in the ownership of Glenveagh Homes Limited and are not in the charge of Cork County council. There are also wastewater capacity issues that have been identified by Irish Water. The required upgrades are outside the control of the landowner.
- Reference to section 3.3.91 Vol.4 of the Development Plan with respect to wastewater treatment capacity in Midleton.
- The project to upgrade treatment capacity is being delivered in two phases, which are due for completion in 2023 and 2026. The subject site is likely to be served in the second phase in 2026. Uncertainty exists on timelines.
- Development of the lands is dependent upon the construction of appropriate road access across lands in the ownership of a third party.

- Enclosures include correspondence from Roads and Transportation at CCC regarding road access and demonstrating that adjacent road is not taken in charge. Correspondence and project information in relation to the Midleton Wastewater Treatment project upgrade is also enclosed.

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:

- Road access available through adjoining existing residential estate and/or adjoining zoned residential land (Phase 2 of permitted development). Uisce Éireann confirm that Wastewater capacity will be available to facilitate development in 2023. In addition, if required, developer led infrastructure will be considered as an interim measure.
- Uisce Eireann confirm that a water main exists on the public road R630 to the west of the site, accessible 447m away via third party lands. A sewer exists on the public road R630, accessible 450m away via third party lands.
- Uisce Éireann - 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 Grounds of Appeal restate matters set out in the submission to the Local Authority as summarised in section 4 above.

7.0 Local Authority Response

- The subject site forms part of a larger area of residential zoned land as set out in the Development Plan MD-R-04, which extends to the public road R630. The portion of residentially zoned land bank that is the subject of this appeal does not adjoin the public road, it forms part of a larger MD-R-04 residential land bank and also adjoins the existing housing estate of Castleredmond / Woodberry. On the western portion of the zoned land bank, between the subject site and the public road R630, consent has been granted by CCC ref.22/4753 for 99 units and ref.21/7428 for 97 units.
- UÉ confirms that water supply is available to serve the subject lands and that wastewater capacity is currently being upgraded to serve Midleton. Both networks are available on the R630 to serve MD-R-04. The wastewater upgrade comprises a medium term solution and interim solution – with delivery of the interim project in 2023.
- 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]*.

- Residential consents were granted on MD-R-04 subject to the provision of temporary treatment units to be decommissioned and the development connected to upgraded wastewater network.
- With regard to road access, notwithstanding the separate landownership within it, the residential land bank of MD-R-04 adjoins the R630 and it is considered for the purposes of RZLT has the benefit of road infrastructure access. (The Castleredmond estate has not as yet been taken in charge by CCC however the commencement of the process is imminent).
- 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.' Reference to page 10 of the Guidelines and that land zoned with specific objectives for facilities but the extent of land not identified, will fall into scope until such time as the relevant land is developed.
- Cork County Council considers that it is 'reasonable to consider' the subject site 'may have access' to the required public infrastructure as demonstrated by multiple planning consents within MD-R-04.

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).

- 8.2. 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. The subject site is not situated in Water Rock.
- 8.3. 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.”*
- 8.4. 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.”*
- 8.5. 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.

- 8.6. 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 ‘public infrastructure’ 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).
- 8.7. The appeal grounds also raise the lack of road access. With respect to road infrastructure, the site has does not adjoin the public road. The Local Authority acknowledge that this is the case but point to the wider land zoning as a solution to this. That wider land zoning does not have relevance under the RZLT criteria, which is concerned with the ability of the landowner to connect to infrastructure. To achieve road access to the site, it would be necessary to cross 3rd party lands outside of the landholder or local authority control.
- 8.8. Page 24 of the RZLT Guidelines state that with respect to road access:

“In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority.”

8.9. Page 25 of the RZLT Guidelines state that with respect to footpath access:

“for lands to be considered in scope, there should be an ease of connection to an existing footpath network to facilitate active travel modes from the outset. Provision of significant sections of new footpath across other landholdings, where the land is not in the control of the landowner or local authority should be discounted when considering lands to be in-scope.”

8.10. Pages 25 and 26 of the Guidelines also confirm that with respect to water and wastewater, consideration of connections should take into account whether the land required to deliver the works is in the control of the applicant or the local authority.

8.11. While I note that there are planning approvals over the western portion of the zoned lands which connect to the public road, the subject site is in different ownership and does not extend to the public road. The sharing of a land zoning with adjacent land does not overcome this ownership issue.

8.12. In conclusion, the site is not served by existing wastewater treatment capacity; would require significant works to connect to foul drainage networks across third party lands; and does not have ease of connection into existing road or pedestrian infrastructure. 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, road and pedestrian infrastructure would require works across third party lands. 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

06 September 2023