



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316399-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Maple Woods, Ballynacorra, Midleton, Co Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	DRZLT472936593
<b>Appellant(s)</b>	Glenveagh Homes Limited
<b>Inspector</b>	Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The site is situated to the south of Maple Woods, west of (albeit detached from) the R630. To the west and south lands are agricultural / greenfield in character, while residential estates appear to the north and east.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned 'Existing Residential/Mixed Residential and Other Uses' under the Cork County Development Plan 2022-2028. Residential is identified as an appropriate use under the zoning Objective in the Development Plan.

## 3.0 Planning History

- 3.1. CCC Reg. Ref. 234450 and ABP Reg. Ref. 317290-23 – Permission granted by CCC for a Large Scale Residential Development (LRD) comprising the construction of 125 no. residential units, 21 no. garden sheds, 1 no. creche, 2 no. ESB substations, a temporary wastewater treatment plant and all associated development works including footpaths, parking, drainage, bicycle and bin stores and landscaping/amenity areas at Maple Woods, Ballynacorra (townland) Ballynacorra, Middleton. Access will be via the existing Maple Woods entrance onto the R630. A Natura Impact Statement is submitted to the planning authority with this application. Third party appeal submitted 2<sup>nd</sup> June 2023, decision due 22<sup>nd</sup> September 2023.
- 3.2. Reg. Ref. ABP-302780-18 – Planning Permission REFUSED for SHD (strategic housing development) for 176 houses. Reason for refusal concerned the lack of wastewater treatment capacity at Middleton Wastewater Treatment Plant, and lack of certainty around the delivery of a pump station and rising main to divert wastewater from Middleton Wastewater Treatment Plant to Carrigtohill Wastewater Treatment Plant and reduce the loading at Middleton Wastewater Treatment Plant. Decision 12<sup>th</sup> February 2019.
- 3.3. Reg. Ref. 046917 – Planning Permission GRANTED for residential development comprising of 1 no. single storey dwelling, 210 no. two storey dwellinghouses including 18 no. with optional habitable accommodation in roof space, 16 no.

apartments/duplex units, 12 no. serviced sites for dwellings and associated site works, with access from Whitegate Road. Decision 29th May 2005.

3.4. Reg. Ref. 124879 – Extension of Duration GRANTED for above development. Decision 6th June 2012.

3.5. 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 wastewater capacity issues that have been identified by Irish Water. The required infrastructure upgrades are to be delivered by Irish Water, and are therefore outside the control of the landowner.
- ABP refused a planning application (ref.ABP-302780-18) by Glenveagh Homes Limited on the subject site in December [sic] 2019, citing a lack of capacity at Midleton WWTP.

## 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:

- UÉ 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. Under 22/6400, planning consent is granted for a temporary WWTP to facilitate residential development of lands. This decision is currently under appeal by 3<sup>rd</sup> party.

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 road Maple Woods in close proximity to the site, accessible 10m away.
- With respect to Wastewater Networks: Confirm that sewers exist within the site extents.
- Other – Wastewater Treatment Plant Capacity: As of 1<sup>st</sup> 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

- Development of the site is constrained by wastewater capacity issues that have been identified by Irish Water. The required infrastructure upgrades are to be delivered by Irish Water, and are therefore outside the control of the landowner.
- ABP refused a planning application (ref.ABP-302780-18) by Glenveagh Homes Limited on the subject site in December [sic] 2019, citing a lack of capacity at Midleton WWTP.
- The subject site is likely to be served in the second phase of the UÉ upgrade works, which will take up to 2026 to be completed.
- The relevant date for assessing the ability of the lands to provide development was 1<sup>st</sup> January 2022. On which date, there was no wastewater infrastructure to serve the site.

## 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 confirm close proximity to water main and sewer via public road.
- UÉ confirms that Midleton WWTP had no spare capacity to cater for additional development and UÉ is currently progressing projects to provide additional wastewater treatment capacity.

- Residential consents were granted on MD-R-04 and at Waterrock [sic] subject to the provision of a temporary treatment unit to be decommissioned and the development connected to the upgraded wastewater network.
- 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 1<sup>st</sup> 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). 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. 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, therefore would rely upon freed up capacity at Midletown as a result of this diversion, or would require a developer-led temporary solution as suggested in the Local Authority response to the appeal. The second phase of the project is to divert a large portion of the loading from Midleton to Carrigtwohill and is due for completion in 2026.
- 8.2. Section 653B, of the Taxes Consolidation Act 1997 as amended, states lands to be included on the map should be serviced:

*“(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.”*

- 8.3. 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.”
- 8.4. I agree with the Local Authority that the phase 1 works to divert loading to Carrigwohill 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 Carrigwohill 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 Carrigwohill WWTP in place 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.
- 8.5. It should be noted that largescale residential development (LRD) planning applications have been approved in Midleton, including on the subject site by Cork County Council (currently subject to appeal to ABP) (see section 3 of this report). These approvals are on the basis that capacity will be available to serve proposed development following planned infrastructure upgrades, with confirmation of feasibility issued on the basis of 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 Carrigwohill WWTP was considered sufficient in that regard, with proposals to connect to Carrigwohill 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 Carrigwohill 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).

- 8.6. In conclusion, the site is not served by existing wastewater treatment capacity, and as such, 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, and 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.

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Rachel Gleave O'Connor  
Senior Planning Inspector

31 August 2023