



An
Bord
Pleanála

Inspector's Report

ABP-316481-23

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.	DRZLT473149935
Appellant(s)	Scorpion Capital & Asset Management Ltd.
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is situated to the south of Ballyrichard More road, to the rear of properties fronting Castle Rock Avenue to the east of the site. Surrounding the site there is agricultural lands and one-off residential housing. A golf club and associated grounds is situated to the north east.

2.0 Zoning and other provisions

- 2.1. The site is zoned MD-RFAP-19 'Residential' under the Cork County Development Plan 2022-2028.

- 2.2. Volume 4 'South Cork' of the Development Plan describes the Objective for MD-RFAP-19 as follows:

"Medium B density residential development to include a mix of house types and serviced sites. 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. Table 4.3.5 of the Plan identifies MD-RFAP-19 as being in 'delivery bundle C', with text below stating:

"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 subject site itself.
- 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- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.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(Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.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:

- Development of the site is restricted in line with the requirements under the development plan.
- The site is subject to service deficiencies.

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 Éireann 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 measures. A number of recent residential planning consents have been permitted within 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 in close proximity to the site, via Ballyrichard More.
- With respect to Wastewater Networks: A collection network is not available in close proximity to the development lands. The closest wastewater collection network is 1250m away in The Fairways housing development, accessible via public roads (Ballyrichard More and L3618) and via third party lands to the south of Water-Rock Golf Club. UÉ has no information as to the ownership of the lands surrounding the land parcel.
- 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 lands should not be included on the RZLT Map at this time, as they do not meet the relevant criteria on January 1st 2022.
- The lands do not have the capacity available to enable housing to be developed.
- Table 4.3.5 requires the sequential development of the lands i.e. A to B to C within the Water Rock Urban Expansion Area.
- Appropriate connections to water services and surface water management systems do not currently exist and did not exist in January 2022.
- Relevant on/off site road infrastructure is not in place and the early development of these lands will, most likely, remain challenging until significant infrastructure associated with Bundles A, B and C is in place and progress has been made in the development of residential development within the Water Rock Urban Expansion Area.
- While the Council refers to recent residential consents granted, no works have commenced to date.
- Uisce Éireann only refer to Waste Water Capacity and neither Uisce Éireann or the Council Planners make any commentary in respect of other water services infrastructure, surface water management systems or on/off site road infrastructure all of which are expressly referred to in the Cork County Development Plan 2022.
- Uisce Éireann confirm that Waste Water Capacity 'will be available to facilitate development in 2023' but the appropriate test is, in fact, whether the lands had, on January 1st 2022 'service capacity available sufficient to enable housing to be developed'.
- The County Council seem to be considering this matter from a future development perspective.

- Sufficient Waste Water Capacity will only be delivered in 2023 and Infrastructure Bundles B&C may commence in parallel with the delivery of infrastructure A where appropriate connections to other water services infrastructure, surface water management systems or on/off site road infrastructure can be secured. There is no evidence to indicate that these services were in place in January 2022 or that they will be in place within the short-term.
- Developer led infrastructure provided at some future date in conjunction with a permitted housing development does not meet the RZLT requirement for 'service capacity available sufficient to enable housing to be developed' in January 2022.
- Reference to planning approvals in Water-Rock and pre-connection agreements with Irish Water, which state that relevant infrastructure will be in place by the end of 2023 with this date subject to change. Associated reference to ABP decision to refuse permission for 176 houses at Maplewood, Ballynacorra, Midleton (ref.ABp-302780-18) with the following reason: 'premature by reference to the existing deficiencies in the provision of sewerage treatment facilities and the period within which this constraint may reasonably be expected to cease and, in the absence of this improved wastewater treatment capacity, would be prejudicial to public health.' Extract from page 23 of the Planning Inspector's report refers to the proposed wastewater project to pump to Carrigtwohill WWTP, to be completed by Q4 2021, with this subject to change.
- Uncertainty regarding delivery of infrastructure to facilitate development.

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. A collection network is not available in close proximity to the development lands but is available 1250m away in The Fairways housing development, accessible via public roads and third party lands to the south of the golf club.
- 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.
- 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.
- 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. The subject site is situated in Water Rock.
- 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 surface water and roads/footpaths. The response from UÉ confirms that a wastewater collection network is not available in close proximity to the development lands, with “...*the closest wastewater collection network 1250m away in The Fairways housing development, accessible via public roads (Ballyrichard More and L3618) and via third party lands to the south of Water-Rock Golf Club*”. 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.
- 8.10. In addition, with respect to road infrastructure, the site has frontage to the public road to the north Ballyrichard More, however there is no existing footpath infrastructure. The provision of upgrades to roads, footpaths and provision of public lighting is all within the normal proposition that would be attached to a development proposal, however, the RZLT Guidelines are clear that there should be ease of connection to the existing footpath network (page 25). There is no existing footpath network proximate to the site, and therefore the site cannot connect into existing pedestrian infrastructure.
- 8.11. 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 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 would require works across third party lands, and the site does not have ease of connection to existing footpaths. 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 2024