



An  
Bord  
Pleanála

## Inspector's Report ABP-316494-23

---

<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>	Lands at Knockgriffin, Broomfield West Townparks (Townlands), Midleton, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	DRZLT475049076
<b>Appellant(s)</b>	Maurice and Bridget Smiddy
<b>Inspector</b>	Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The site is situated to the south and east of the Northern Relief Road, west of the R626 and north of the railway lines. Midleton Station situated further to the south east. The site forms part of lands identified under parcel ID: MD-ZLT-15 in the RZLT Maps, situated to the west of that land parcel.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned MD-X-01 'Special Policy Area' in the Cork County Council Development Plan 2022-2028. The land use zoning objective for special policy areas is set out below:

*“Recognise that there are a small number of sites within the urban areas of the County where the normal land use zoning requirements do not apply. These can be subdivided into 3 distinct categories namely: a) Areas suitable for mixed use development (both brownfield and greenfield sites) where the range of uses are outlined. b) Areas suitable for mixed use development where further study is required to guide the significant or strategic nature of the site. This will involve the preparation of a master plan, design brief or area action plan before any formal planning application is made for the development. These should be subject to SEA and HDA screening where appropriate. c) Areas which require specific policy guidance to protect the unique characteristics of that particular area.”*

- 2.2. Volume 4 'South Cork' defines special policy area MD-X-01 as follows:

*“Mixed use residential and office development. Provision may also be made for small scale retail units at ground floor level, with office and/or residential uses at upper floor levels appropriate to a mixed use urban neighbourhood. Pedestrian and cyclist linkages shall be provided along the Owenacurra River. Proposals should include protection of the River Corridor and should explore linking the site with Green Infrastructure sites to the north and south of the site, perhaps include on site surface water attenuation / flood risk management measures.”*

### 3.0 Planning History

- 3.1. Overlapping the northern edge of the site, application Reg. Ref. no.225032 for the Midleton North Wastewater Pumping Station and Network, permission GRANTED by Cork County Council 13<sup>th</sup> February 2023. Appeal Ref. ABP-316013-23 to An Bord Pleanála.
- 3.2. Overlapping the southern boundary of the site as it adjoins the railway lines, and traversing the site, current Strategic Infrastructure Development application with An Bord Pleanála, ABP Reg. Ref. 315087 'Railway (Glounthaune to Midleton Twin Track) Order 2022'.
- 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:
- The lands are not served by public foul sewer.

- Cork County Council have recently commissioned work on the LIHAF scheme to service planned and future residential development in Water Rock on the west side of Midleton. The Council will construct a new foul sewer north of the lands, but it will not serve the lands.

## 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 confirms availability of water services infrastructure. Wastewater sewer 360m away via northern relief road; alternative access via third party lands and requiring a river crossing.

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, 10m away via the Northern Relief road.
- With respect to Wastewater Networks: a sewer exists on the public road R626, 360m away via the Northern Relief road. Alternative access to the sewer may be available via third party lands adjoining the site. Connection to the sewer via third party lands would require a river crossing.
- 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**

- The lands are not ‘lands which meet the relevant criteria’ within the meaning of section 653B of the Taxes Consolidation Act 1997 as amended.
- Cork County Council did not undertake a proper or meaningful infrastructural assessment of the lands as required under the Act and the RZLT Guidelines.
- Uisce Éireann has control over the delivery of the public (water and wastewater) infrastructure necessary for the lands to be developed. Therefore the development of the lands is outside of the landowners control.
- The zoning objective for the lands require the provision of pedestrian and cyclist linkages being provided along the banks of the Owenacurra River – this infrastructure must be provided before the lands can be developed and is outside of the landowner control.
- Cork County Council misunderstood or misconstrued Section 653B of the Act and/or the RZLT Guidelines in determining that the lands meet the criteria.
- 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.’

- The works to connect the landbank to services are under the control of Uisce Éireann (UÉ). Significant connections to services will be required by UÉ to service the lands and the works to be carried out by UÉ will take place on several third-party lands.

Enclosures: Copy of documentation associate with council determination with respect to RZLT; extracts from land registry; copy of letter from Uisce Éireann, confirming connection to wastewater feasible with upgrades and in order to accommodate wastewater connection a network extension of 325m is required, and Irish Water is progressing a project to provide additional wastewater treatment capacity due for completion in 2023.

## 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.'
- Pedestrian and cycle linkages required as set out in the CDP refer to works internal to the site that can be provided as part of a consented site development project.

- 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. It should be noted that this assessment relates solely to the part of the site identified by parcel ID: MD-ZLT-17 in the appellants ownership.
- 8.2. 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.
- 8.3. 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.”*

- 8.4. 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 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 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 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).

- 8.7. Overall, 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, 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.

---

Rachel Gleave O'Connor  
Senior Planning Inspector

18 August 2023