



An
Bord
Pleanála

Inspector's Report

ABP-316737-23

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	Ballynacorra West, Ballinacurra, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT473477046
Appellant(s)	Scara Ventures Limited
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

1.1. The site is situated to the south of Upper Road / Rose Lane in Ballinacurra, within the development boundary of Midleton County Cork. The site is west of the R629 and has frontage onto both Rose Lane and the R629, and there is an existing access from the R629. To the south, the site backs onto the rear of properties in the Rose Hill estate, and to the Old Dairy estate is to the east. The site is currently occupied by vacant and historic industrial structures, hardstanding areas and overgrown vegetation.

2.0 Zoning and other provisions

2.1. The site is zoned MD-T-07 'Town Centre / Neighbourhood Centres' and regeneration area MD-RA-03 in the Cork County Council Development Plan 2022-2028. The site is also occupied by a Registered Protection Structure, RPS no.523 'Industrial Buildings, Maltings'. Section 18 of the Development Plan identifies that residential is an appropriate use in the land use zoning applicable to the subject site. The site is identified as land parcel ID: MD-ZLT-17 under the RZLT Map.

2.2. To the west of the site, land is zoned 'Existing Residential / Mixed Residential and Other Uses', however this portion of the site where Registered Protected Structure RPS no.520 'Rosehill House' is situated, is not included within the land parcel identified under the RZLT map.

2.3. Objective MD-T-07 in volume 4 'South Cork' of the Development Plan states:

"To provide for a mixed-use neighbourhood centre with some retail, residential, commercial and community development in a form that respects the protected structures remaining on the site. Redevelopment of the site shall ensure the protection and reuse of the protected Maltings (Industrial Buildings) on site. Development of this site is contingent on the provision of flood relief works to the village of Ballinacurra and road improvements to Carneys Cross."

2.4. Regeneration Area MD-RA-03 is also described in volume 4 as follows:

“MD-RA-03: Former Mill Buildings Ballinacurra: This is an important site comprised of a mix of traditional and relatively modern buildings. Consideration should be given to the conversion of the principal traditional building on the site to other uses more compatible with the site’s present surroundings. The development of a neighbourhood centre with some retail, residential and commercial may be suitable in a form that respects the traditional buildings remaining on the site. Development of this site is contingent on the provision of flood relief works to the village of Ballinacurra and road improvements to Carneys Cross.”

3.0 Planning History

- 3.1. Application Reference no.088077 dated 29th June 2009. Planning permission REFUSED for demolition of 2 no. habitable dwellings to include Eastville House, removal of existing grain silos and sheds and other industrial uses currently on site, alteration, extension and change of use of maltings buildings to 23 no. apartments, commercial offices and library, alterations and change of use of Rosehill House incorporating courtyard for use as medical centre, construction of 48 no. dwellings and 87 no. apartments (in three separate blocks), provision of 298 no. car parking spaces to include 138 no. basements spaces, construction of separate building comprising of 2 no. retail units, construction of coffee shop/cafe, provision of biomass district heating system incorporating a central plant room and fuel store, improvement of site lines at junction at Carney's Cross, 16 no. classroom primary school, creche, car parking, recreation and amenity facilities and bring bank/recycling facility and all associated site works to include sales/marketing signs, ESB substation and site development works
- 3.2. Reason(s) for refusal not 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:

- Landowner is committed to the delivery of mixed-use development at the site, which will include residential accommodation during the lifetime of the CDP in accordance with the sites MD-T-07 zoning objective.
- Development of the lands is currently not deliverable due to infrastructural constraints relating to deficiencies in wastewater infrastructure, outside the control of the landowner. As confirmed in section 3.3.91 of the CDP the existing Midleton Wastewater Treatment Plant is currently operating at capacity and has no spare capacity to cater for additional development until critical upgrades take place.
- Until upgrades are completed and operational, the subject lands do not have access to adequate wastewater infrastructure and residential development is not deliverable with reference to CDP Objective MD-GO-03.
- The subject site also includes structures of architectural heritage relating to the sites historical industrial use. Specifically, the industrial buildings on the site are identified as Protected Structures in the CDP (RPD Ref:523) with Rosehill to the west of the site also identified as a Protected Structure in the

CDP (RPS Ref:520). The National Inventory of Architectural Heritage (NIAH) also identifies architectural features on the site specifically, 2 no. malt houses (NIAH Refs 20907637 and 20907639), 2 no. dwellings (NIAH Refs 20907636 and 20907635) and 2 no. recorded monuments (CO076-075 and CO076-044 which includes an archaeological zone of notification).

- Reference to CDP Objectives WM 11-1; WM 11-9; HE 16-6; HE 16-14; and HE 16-15.

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 wastewater capacity will be available to facilitate development in 2023. In addition, if required, developer led infrastructure will be considered as an interim measure.
- Archaeological issues can be addressed through the development management process.

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, either via Rose Lane or the R626.
- With respect to Wastewater Networks: Confirm that a sewer exists on the public road in close proximity to the site via Rose Lane. There are also sections of sewer within the western portion of the site. The site layout would have to take account of the existing sewers and their associated wayleaves. It is essential that these assets are protected and access is maintained at all times.
- 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

- Appendix D of the CDP outlines the ‘requirements for the various settlements across Cork County. The response from Uisce Éireann confirms that the upgrade of wastewater infrastructure in the settlement is a two-tier process, with a target timeframe of delivery of 2026.
- Due to the restricted nature of the site and heritage assets within, the subject site is not capable of accommodating developer led wastewater infrastructure. Attached response from Irish Water to a pre-connection enquiry dated 31st March 2021, that a wastewater connection to serve development at the lands is not feasible in the absence of upgrades to the wastewater network by Irish Water.
- There are longstanding wastewater infrastructure deficiencies in Midleton, which have impacted the delivery of growth in the settlement. There are

several other projects in the town with planning permission that will utilise the first tranche of available capacity in 2023.

- The subject site includes structures of architectural heritage relating to the sites historical industrial use. Protected structures RPS no.520 and 523. As well as NIAH architectural features refs.20907637 and 20907639, and recorded monuments CO076-75 and CO076-044 which includes an archaeological zone of notification.
- Note CDP objectives subjecting the site to architectural heritage constraints: HE 16-6, HE 16-14 and HE 16-15.
- Development of the subject site is contingent on the provision of flood relief works as set out in the MD-T-07 zoning objective. The 'Midleton Flood Relief Scheme' is currently at design stage and will in the future have to obtain planning permission and then be constructed before the subject lands can be considered serviceable. These works are to take place on lands outside the control of the appellant.

ENCLOSURES: Copy of determination from by the Local Authority; Copy of correspondence from Uisce Éireann relating to a pre-connection enquiry for a multi/mixed use development of 102 unit(s) at The Mill, Ballinacurra, Cork, confirming 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 (dated March 2021); Maps of the site.

7.0 **Assessment**

- 7.1. The maps included within the submission to the Local Authority and the grounds of appeal identify a wider site area than that identified on the RZLT Maps under land parcel ID: MD-ZLT-17. Therefore, it should be noted that this assessment relates solely to the site identified by parcel ID: MD-ZLT-17, which is zoned town centre and excludes Registered Protected Structure RPS no.520 'Rosehill House' which is located to the west of the subject site. The subject site does include Registered Protection Structure, RPS no.523 'Industrial Buildings, Maltings'.

- 7.2. 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). 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.
- 7.3. 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. However, the appellant has included a pre-connection enquiry which specifically relates to the subject site (dated March 2021) which identifies that wastewater connection is not feasible, and connection to phase 1 loading improvements will be on a first come, first served basis. The appellant states that there are other planning approvals for development in the area which will be served by the phase 1 improvements first, and therefore capacity will not be available to serve potential development of the subject site.
- 7.4. While Midleton WWTP is categorised as 'Red' with no capacity, Uisce Éireann 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, 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.

7.5. 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.”

7.6. 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.”

7.7. 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.

7.8. 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).

- 7.9. With respect to the heritage matters identified by the appellant. The protected structure and other NIAH designations on the site would not prevent a proposal coming forward to develop the lands. This supported by the relevant objectives for the subject site set out in the Development Plan which recognise both the structures of historic significance on the site and the regeneration/development potential of the site. With respect to archaeology, this would be adequately addressed (with any necessary mitigation provided) through investigations and reports that would be required as part of any planning application for a development proposition for the site. In this regard, I note page 9 of the RZLT Guidelines states that in relation to archaeology *“Brownfield land which lies within a zone of notification may be scoped in, as development has taken place on the land and matters relating to resolution of potential archaeological remains can be dealt with during the development management process.”*
- 7.10. The appellant also raises matters with respect to flood risk. Objective MD-T-07 of the Development Plan states that development of the subject site is contingent on the provision of flood relief works to the village of Ballinacurra and junction

improvements at Carneys Cross. The appellant states that as these works are required on lands outside of their control, the subject site should not be in scope for the RZLT.

- 7.11. Page 224 in Volume 4 of the Development Plan states that *“Cork County Council, acting as Agents for the OPW, has commissioned Arup to develop a Flood Relief Scheme for Midleton. The project will comprise five stages with the first stage to be completed by the end of 2021 and the final stages including the construction and handover of the works to commence in 2024. Until the flood relief scheme is completed, significant new development in Flood Zones A and B is considered premature.”*
- 7.12. The subject site itself is not situated within flood risk zone A or B. The OPW website has information relating to the flood relief scheme for Midleton, including the Water Rock and Ballinacurra areas. As set out in the Development Plan, works are anticipated to be complete by 2024. Therefore, proposals for the subject site are unlikely to be unduly restricted by flood risk considerations in my view.
- 7.13. With respect to junction improvements at Carneys Cross, the Development Plan does not detail what these improvement works would comprise; however it would be within the normal parameters of a development proposal for multiple residential units to include contribution towards road infrastructure improvements where necessary.
- 7.14. In conclusion, while the subject site has access or ability to connect to existing road, pedestrian and other infrastructure, and would not be unduly restricted in relation to flood risk, existing wastewater infrastructure capacity has not been demonstrated. As such, the subject site is not in scope for the RZLT Map.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. 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 2024