



An
Bord
Pleanála

Inspector's Report

ABP-316756-23

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	Broomfield West, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DZRLT473473355
Appellant(s)	Castle Rock Homes (Midleton) Limited
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is situated to the south east of Broomfield West road, north of the recently constructed residential estate at Blossomhill. The site adjoins agricultural field to the east.

2.0 Zoning and other provisions

- 2.1. The site is zoned MD-R-26 'Residential' under the Cork County Development Plan 2022-2028.
- 2.2. Volume 4 'South Cork' of the Development Plan describes the Objective for MD-R-26 as follows:

“Medium A Density Residential Development to include a mix of house types and subject to the following: a) traffic impact assessment and road safety audit, and associated proposals for road upgrades / improvements to accommodate the increased traffic volumes on the road network, locally and in the wider Midleton context, including access to local services and amenities, the Northern Relief Road and the N25 (junction capacity etc.). b) Proposals shall include provision for pedestrian and cyclist connectivity to the train station, town centre and to other developments to the south and west (to Mill road and the school). c) the availability of water services. d) The design, layout and finishes of the scheme shall seek to minimise visual impact given the elevated nature of the site and shall include a detailed landscaping proposal.”

3.0 Planning History

- 3.1. No planning history on the 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 - 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.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(Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.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Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.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 lands is not currently 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.
- The MD-R-26 zoning objective confirms that development can only be accommodated at the subject lands subject to ‘the availability of water services’ and CDP Objectives WM 11-1 and WM 11-9 both confirm that development can only proceed in areas with sufficient capacity in wastewater service infrastructure.
- The future delivery of wastewater upgrades will be materially significant and involve the construction of significant sections of wastewater infrastructure new road and access across other landholdings.

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 measure.

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, 2m away via the road L7360 adjoining the land parcel. There is also a section of watermain within the south western portion of the site. The site layout would have to take account of the existing main and it's associated wayleave.
- With respect to Wastewater Networks: a sewer exists on the public road in close proximity to the site, available 170m away via the L7360 road adjoining the land parcel. Alternative access to sewers may be available via Blossom Hill housing development to the south of 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

- Appendix D of the CDP Table D2 confirms wastewater upgrades are required in Midleton to support the delivery of land zoned for development. Table D3 confirms that the subject site MD-R-26 are categorised as Tier 2 lands and reliant on the delivery of road, wastewater and water supply upgrades to facilitate immediate development. Appendix 3 of the NPF defines Tier 2 ‘Serviceable Zoned Lands’ as lands that are not currently sufficiently serviced to support new development but have the potential to become fully serviced within the life of the plan.
- Longstanding wastewater infrastructure deficiencies in Midleton as confirmed in section 3.3.91 of the CDP.
- Pages 24 and 27 of the RZLT Guidelines, confirm that lands must be both zoned and serviceable one month prior to publication of the RZLT Maps.
- Attached is a Confirmation of Feasibility from Uisce Éireann dated January 2023, relating to a development of 272 units on the lands, stating that residential development is not deliverable due to infrastructural constraints relating to deficiencies in wastewater infrastructure.

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 confirms that a water main and a sewer exists on the public road proximate to the site.
- 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.
- The CDP zoning objective for the subject site requires a Traffic Impact Assessment and Road Safety Audit to be undertaken as part of the development of the lands. This requirement does not preclude development of the site.
- The subject site adjoins the public road where connection to an existing footpath can be made.
- 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.
- 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. With respect to other relevant infrastructure, the site is proximate to Blossomhill and there would be ease of availability to connect to networks.
- 8.9. In conclusion, for the purposes of the RZLT and with reference to the applicable legislation and guidance for the RZLT, the site is not served by existing wastewater treatment capacity. 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. 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

25 August 2023