



An
Bord
Pleanála

Inspector's Report

ABP-316808-23

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 and Townparks, Mill Road, Midleton, County Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

DRZLT473693232

Appellant(s)

Sheenvale Limited

Inspector

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 Millbrook Residential estate. Railway lines are located along part of the southern boundary to the site, with Midleton Station situated to the south east. The site forms part of lands identified under parcel ID: MD-ZLT-15 in the RZLT Maps, situated to the east 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 edges of the site, application Reg. Ref. no.225032 for the Midleton North Wastewater Pumping Station and Network, permission GRANTED by Cork County Council 13th 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 site is subject to two live planning applications: one relates to water and wastewater infrastructure (Reg. Ref. 225032); and one relates to transport infrastructure and facilities (ABP Reg. Ref. 315087). Both require significant envelopes of the zoned land. The later application has proposed site compound on the land until 2026.
- The lands play an instrumental role in providing local water and wastewater infrastructure and facilities, and also plays a critical role in the provision of future transport facilities and infrastructure for the adjoining railway line.

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:

- The site meets the criteria for inclusion on RZLT Map as set out in Section 653B of the Taxes Consolidation Act 1997. Tax liability / exemptions / reductions relating to on-site compounds are a matter for submission by the landowner to revenue.

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 the R626.
- With respect to Wastewater Networks: Confirm that a sewer exists on the public road in close proximity to the site via R626.
- 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 are included in the development schemes of 2 no. State bodies.
- Uisce Éireann intend to utilise several parts of the lands for the development of a pumping station to service Midleton North and enable the future delivery of Water Rock Urban Expansion Area (UEA) (ref.225032 and ABP-316013).
- Iarnród Éireann have lodged a Railway Order Application (ABP-315087) with An Bord Pleanála. Significant parts of the lands are to be used as a construction compound for several years, with access haul routes traversing the lands.
- It is important to recognise that the occupation of the lands by these State bodies is to provide for essential sustainable residential development, and the principal behind the RZLT is to generate more residential development.
- Reference to the RZLT Guidelines part 22A-01-01, and exemption for land that is required for, or occupied by other uses, such as transport facilities and infrastructure and water and wastewater infrastructure and facilities.
- The lands are categorised as being predominantly Flood Zone A and B. The Cork County Development Plan states with reference to Midleton, that until

the flood relief scheme is completed, significant new development in Flood Zones A and B is considered premature.

- Reference to Objective MD-GO-13 in the Development Plan, which reserves land on either side of the railway route to facilitate the possible future upgrading of the route to double track standard, with development of new buildings not required for operation of the railway to be resisted on land within 5m of the perimeter fence on either side of the railway.
- The area included under reference MD-ZLT-15 includes a large area in respect of which the ownership is fragmented. The appellant only owns part of the land.
- No explanation or reasons provided by the Council with respect to its determination.

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 1st 2022.
- With regard to the provision of water services or rail related infrastructure within the site, it is Cork County Council's understanding that (similar to other non-residential uses) the land associated with the provision of such facilities may be excluded from the RZLT valuation and liability.
- With regard to the location of the lands within Flood Risk Zones A & B and the future provision of the Midleton Flood Relief Scheme, the land form part of a mixed use zoning allowing potential for a number of appropriate uses which would be subject to a Sequential Test, Justification Test and Flood Risk Assessment as required by The Planning System and Flood Risk Management Guidelines for Planning Authorities. Any proposed development for the site should include the relevant mitigation measures and assessment of residual risk. Therefore the location of the lands within designated Flood Risk Zones does not preclude the appropriate development of these lands.

8.0 **Assessment**

- 8.1. 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-15. Therefore, 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 appellant raises the matter of occupation of the site for transport and wastewater infrastructure works. Application Reg. Ref. no.225032 for the Midleton North Wastewater Pumping Station and Network, was permission GRANTED by Cork County Council 13th February 2023 and is subject to appeal Ref. ABP-316013-23 to An Bord Pleanála. There is also a current Strategic Infrastructure Development application for a Railway Order with An Bord Pleanála, ABP Reg. Ref. 315087 'Railway (Glounthaune to Midleton Twin Track) Order 2022'. Both of these applications traverse parts of the site.

8.3. Section 653B of the Taxes Consolidation Act 1997, as amended by the Finance Act 2021, identifies the criteria for inclusion in the RZLT Map and identifies that exempted lands include:

(iii) that it is reasonable to consider is required for, or is integral to, occupation by-

(II) transport facilities and infrastructure

(v) water and wastewater infrastructure and facilities.

8.4. Page 10 of the RZLT Guidelines state that it is reasonable to exclude land required for the provision of infrastructure which will sustain existing and future residential communities. The guidelines go on to state that:

“...Where the land is zoned for residential development and specific objectives apply to provide such facilities but the extent of land required for such a use is not identified, the land will fall into scope until such time as it is developed and the relevant land will then fall out of scope.” And “...In determining the land area assigned to these uses, Local Authorities may discount permitted development including local authority or state approved development, or development under construction which falls within the above categories.” (Pages 10 and 11).

8.5. The Railway Order application and wastewater infrastructure planning application traversing the site, would in my view, fall within this category. The State is progressing these infrastructure improvement projects, and the associated applications clearly identify the extent of lands impacted by the proposals. As such, those part of the subject site which are overlapped by applications LAP Ref. no.225032 for the Midleton North Wastewater Pumping Station and Network granted 13th February 2023 subject to appeal Ref. ABP-316013-23, and Railway Order ABP Reg. Ref. 315087 currently with An Bord Pleanála, should be excluded from the RZLT Map.

8.6. The grounds of appeal raise the matter of flood risk. Section 3.3.96 of the Cork County Development Plan 2022-2028 states:

“...The Draft Catchment Flood Risk Management Plan identified a preferred option for the alleviation of flood risk in the Midleton catchment. 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 finals 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...”

- 8.7. The majority of the site is situated within Flood Zone A. Section 653B(c) of the Taxes Consolidation Act 1997 as amended, states that for lands to be included, there should not be a physical condition precluding the provision of dwellings on the site:

“(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains.”

- 8.8. The provision of dwellings in flood risk areas can be controlled through the development management process, including on this site zoned for a mix of uses, with the provision of residential use at upper levels. I note that the Local Authority’s response also highlights that the application of the sequential test and flood risk mitigation would be suitable in that sense. However, the Development Plan in this case identifies the requirement for a flood relief scheme in the Midleton area and that the provision of significant new development in Flood Zone A will be considered premature in the absence of this scheme. On this basis, the parts of the subject site situated in Flood Zone A should be removed from scope, as those part of the sites would be considered premature for development in the absence of the flood relief scheme under the provisions of the Development Plan.

- 8.9. The grounds of appeal do not raise the matter of wastewater infrastructure capacity. However, 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 Midletown to Carrigtwohill and is due for completion in 2026.

- 8.10. 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.”

- 8.11. 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.”

- 8.12. 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 Midletown 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.

- 8.13. 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).
- 8.14. In conclusion, I have highlighted those parts of the site that under section 653B of the Taxes Consolidation Act 1997 should be excluded due to the delivery of transport and wastewater infrastructure. I have also highlighted that the Development Plan considers development on the site within Flood Zone A to be premature in the absence of the flood relief scheme for the area, and as such those parts of the site should also be considered exempt. With respect to the site in its entirety, it is not served by existing wastewater treatment capacity.

- 8.15. 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 2024