



An
Bord
Pleanála

Inspector's Report ABP-316889-23.

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 Map

Location

Lands at Fermoy Road, Mitchelstown, Co. Cork

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT- 472761832

Appellant

Patrick O'Farrell

Inspector

Emma Nevin

1.0 Site Description

- 1.1. The site comprises a parcel of land located to the west of Railway Road, to the east of Cork Road and to the south of the centre of Mitchelstown town. The site is bound by a mix of uses, predominantly residential. The has a stated area of 3.85ha.

2.0 Zoning

- 2.1. The site is zoned objective MD-R-04 under Volume 3 ‘North Cork’ of the Cork County Development Plan 2022-2028, which states” Medium B density residential development to include provision for a relief road. Existing habitats on site should also be protected/enhanced and incorporated into a new development”.
- 2.2. The Cork County Development Plan, 2022-2028, ‘Medium Density B’ states;
‘An increased minimum threshold is recommended from 12 to 20 units /ha in this category and the maximum threshold from 25 to 35 units /ha which will overlap with the Medium A category. This revised density range of 20-35 units/ha would not generally be applicable in the larger settlements >5,000 population other than for limited site specific reasons relating to sites with topography/ heritage constraints or where there is a specific market requirement. This revised Medium B density category would be generally applicable to suburban and greenfield sites of the smaller towns with a population’.

3.0 Planning History

- 3.1. Ref: 126353: Extension of duration of permission granted for development approved under Planning Reg. No. 07/8268 by Cork County Council on 23/01/2013.
- 3.2. Ref: 078268: Conditional planning permission granted by Cork County Council on 19th January 2008 for a development consisting of a residential development of 70 no. dwellinghouses, 4 no. residential serviced sites, 1 no. attenuation tank and associated site works and services including 2 no. entrances.
- 3.3. Ref: 0711189: Conditional planning permission granted by Cork County Council on 7th January 2008 for a two-storey dwelling house and associated site works.

4.0 Submission to the Local Authority

- 4.1. The lands are not capable of being serviced.
- 4.2. Reference is made to planning reference 22/4420, as being refused in the area for WWPT Capacity Issues & Cork Mart site, which is pending a decision and will possibly be deemed premature.
- 4.3. The residential market has not improved.
- 4.4. The cost of planning is expensive, and the Council advised that a further extension would be refused on the basis that only one extension is ever granted.
- 4.5. Other permissions have been granted in the vicinity but subject to sewerage plant being upgraded.

5.0 Determination by the Local Authority

- 5.1. A report was received from Uisce Eireann which confirms that:
 - A watermain and sewer exists on the public road in close proximity to the site (10 metres away, via Fermoy Road, adjoining land parcel) and can be connected to same.
 - Regarding water supply, there can be intermittent disruptions to supply, however upgrade works are ongoing to improve the level of service.
 - The 2022 wastewater treatment capacity register indicates that, although limited, spare capacity currently exists in the Mitchelstown wastewater treatment plant.
 - A sewer exists on the public road in close proximity to the site and the sewer is accessible 8m away via the Fermoy Road, adjoining land parcel.
 - The WWPT is capable of achieving at least urban wastewater treatment directive standards. Potential additional capacity is available, depending on any additional load, not resulting in a significant breach of the combined approach as set out in Regulation 43 the Wastewater Discharge (Authorisation) Regulations 2007.

- UE recently completed capital maintenance works at Mitchelstown at WWPT to bring the 4th trickling filter back into operation and increase the capacity of the plant from 5,600 PE to 7,400 PE in terms of achieving the UWWTD.
 - A longer- term upgrade will be required to achieve WWDA ELV compliance and may require a new discharge location.
- 5.2. Regard is had to the RZLT Guidelines (page 7) which states; “In addition the land must be connected to or have access to public infrastructure and facilities necessary for dwelling to be developed and with sufficient service capacity available for such development”.
- 5.3. Regard is had to the RZLT Guidelines (page 8) which states; ‘*A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*’.
- 5.4. It was determined that the subject site fulfils the qualifying criteria set out in the Taxes Consolidation Act, 1997, as amended and the Section 28 Ministerial Guidelines “Residential Zoned Land Tax – Guidelines for Planning Authorities’ for inclusion on the RZLT Map.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant raised similar issues to those in the submission to the local authority including:

- The West water system in Mitchelstown is at capacity and has been recently upgraded to accommodate 70 to 75 new housing units. This extra capacity will be used up by two recent planning developments for 48 houses at the Mart premises (Ref:224468 Cork County Council) and 42 units at the Convent Development (Ref: 185485 Cork County Council).
- Planning was granted for these lands but expired on the 18th of February 2018.

- As of this date it would appear that there is no spare capacity at the treatment plant.
- It is extremely difficult for a layperson to obtain accurate information from Irish water in regard to capacity status of the treatment plant. A formal inquiry has a time factor of 16 weeks for a written answer. The website indicates available capacity as amber but no other information. Some information has been obtained from newspaper articles.
- The lands are actively for sale but at present there is no demand for residential development sites in rural towns like Mitchelstown. Regard should be had to the current planning permissions in the immediate vicinity. There is more than sufficient housing to supply the housing needs of the town for the foreseeable future.
- The appellant inherited the land from his father. The family home was built on land (Ref:026220), and he sold a portion of the lands to 'LIDL' in 2003 for a family discount store. Planning permission was granted for a residential development of 70 houses (17/01/2008) with the intention of selling the land. Unfortunately, the property boom came to an end and as such the appellant couldn't find a buyer for the site.
- The permission was granted until 2018, however, the market had not recovered, and the land could not be sold.
- The further extension of permission was refused by the Council, the cost of planning is outside the appellants financial scope at present, and the appellant is a willing seller.

7.0 Assessment

- 7.1. To satisfy the criteria as identified in section 653B of the Taxes Consolidation Act 1997, as amended, land must be zoned residential use or for mixed uses including residential. It is noted that subject site is zoned MD-R-04 'Medium B density residential development' under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028.

- 7.2. The references to the planning history and the demand for housing in the area are not criteria from omission from the RZLT map.
- 7.3. The issues raised by the appellant with respect to sufficient capacity available to service the subject lands are noted.
- 7.4. Regard is had to the Uisce Eireann further information response to the 'RZLT Query' sought by the Local Authority as part of their assessment. Uisce Eireann confirmed that wastewater capacity (while limited) is available and water supply is also available (while intermittent disruption exists). The wastewater treatment is capable of achieving Urban WWT Directive Standard.
- 7.5. Notwithstanding, the requirement for upgrades to the existing systems, I refer to the Residential Zoned Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states "*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. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist*".

As per the guidelines, a need for upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.6. It is also noted the Mitchelstown water resource zone (WRZ ID: 0500SC0100) is stated to have 'Potential Capacity Available - LoS improvement required', on the Uisce Eireann Water Supply Capacity Register published in June 2023 (Potential Capacity Available - LoS improvement required = Capacity constraints exist, connection applications will be assessed on an individual basis considering their specific load requirements - Level of service (LoS) improvement required to meet 2032 population targets. Improvement proposals will include but are not limited to leakage reduction and/or capital investment. These proposals will be required to maintain/improve levels of service as demand increases. These proposals will be developed & prioritised through the National Water Resources Plan and investment planning process').

- 7.7. While there is an improvement required, in my opinion there is a viable water supply/connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of water supply, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.8. Furthermore, the Mitchelstown WWTP (Ref. D0202) has a 'Amber Status' on the Uisce Eireann Wastewater Treatment Capacity Register published in June 2023. Amber status is stated to mean '*potential spare capacity, applications to be considered on an individual basis considering their specific load requirements*'. It is also noted that a 'WWTP Project Planned/Underway'.
- 7.9. In my opinion there is a viable wastewater connection available in proximity to the site and, therefore, the site can be reasonably serviced in terms of wastewater, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.10. As such, the lands are considered to be serviced for residential dwellings as per as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

8.0 Recommendation

- 8.1. I recommend that the board confirm the determination of the local authority and direct the local authority to retain the lands identified as DRZLT- 472761832 on the map.

9.0 Reasons and Considerations

- 9.1. The appellant requested that their site be removed from the map due to the fact that the lands are not capable of being serviced. Reference is made to planning applications being refused in the area for WWPT Capacity Issues and Cork Mark site (decision pending) will possibly be deemed premature. 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 the advice in the Residential Zoned Land Tax – Guidelines for Planning Authorities, 2022. The lands as identified DRZLT- 472761832 are considered in scope of section 653B of the Taxes Consolidation Act 1997, as amended,

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Emma Nevin
Planning Inspector

31st August 2023