



An  
Bord  
Pleanála

## Inspector's Report ABP-316892-23.

---

|                                  |   |
|----------------------------------|---|
| <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 Map |
| <b>Location</b>                  | Lands at Kildorrey Road, Mitchelstown, Co. Cork   |
| <b>Local Authority</b>           | Cork County Council   |
| <b>Local Authority Reg. Ref.</b> | DRZLT- 473449616  |
| <b>Appellant</b>                 | Thomas and Anne Roche   |
| <b>Inspector</b>                 | 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 Special Policy Area, under objective MH-X-01 as per Volume 3 'North Cork' of the Cork County Development Plan 2022-2028. The objective states "To protect the existing trees on site which contribute to the amenity and environment of the town. Consideration may be given to the provision of a maximum of five dwellings units on site subject to access, layout, siting, and design issues ensuring the long-term protection of the trees on site".
- 2.2. The existing boundary wall is listed in the National Inventory of Architectural Heritage (NIAH) as follows: Mitchelstown Castle, Kildorrey Road, George Street, Mitchelstown (Reg. No. 20818116); as having Architectural Interest on the NIAH.

## **3.0 Planning History**

None located.

## **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.
- 4.3. The County Development Plan cites max 5 no. dwellings on site.

## **5.0 Determination by the Local Authority**

- 5.1. A report was received form Uisce Eireann which confirms that:

- A watermain and sewer exists on the public road in close proximity to the site, GIS data indicates that a watermain is accessible 22 metres away, via Kildorrery Road, adjoining land parcel.
- A sewer exists on the public road in close proximity to the site, GIS data indicates that the sewer is accessible 20m away via the Kildorrey Road, adjoining the land parcel.
- Supply challenges currently exist in the Mitchelstown Water Resource Zone, and more specifically in the Mitchelstown North Water Supply Zone. Intermittently, the level of service is disrupted due to high turbidity levels. 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.
- 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. Matters regarding conservation, tree preservation order and traffic impact do not fall within the scope of consideration for exclusion of entry. As identified in Section 3.1.2, there are a number of reasons why zoned and serviced land could be excluded from the map. This includes land in need of specific remediation for contamination, land which has significant known archaeological remains, land on the derelict site register, land required for infrastructure identified in Section 653(c)(iii)(I) – (VII), and exclusions for existing uses on land. Section 653(c)(ii) respectively identified where certain uses may be excluded from the tax measure.
- 5.5. The Council is also aware that the existing spare capacity available in the Mitchelstown WWTP is limited and will consider interim developer led on-site infrastructure provision that can connect to the network, pending additional treatment plant capacity being made available.
- 5.6. 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 wastewater 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).
- 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.

- This is a mixed-use development site with conservation constraints on the Old Demesne Wall, which fronts the entire public road boundary and is a protected structure (Ref: 20818116). In addition, there are preservation orders on the growing trees on the site.
- The Old Demense Wall runs the entire length of the site's frontage, the existing vehicular entrance is single vehicle only and is located adjacent to a busy signalised traffic and a new estate style entrance will prove very problematic.

## 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 MH-X-01 'Special Policy Area' under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028. While the zoning objective states that "Consideration may be given to the provision of a maximum of five dwellings units on site subject to access, layout, siting and design issues ensuring the long-term protection of the trees on site", the site is zoned for residential use.
- 7.2. The references to the planning history in the area is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act, 1997, as amended.
- 7.3. The appellant expresses issues and difficulty in obtaining information from Uisce Eireann. This, however, is not a matter for consideration for An Bord Pleanála under section 653B of the Taxes Consolidation Act 1997, as amended.
- 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. With respect to the heritage matters identified by the appellant, specifically the Old Demesne Wall. I consider that the NIAH designations on the site would not prevent a proposal coming forward to develop the lands for residential dwellings. Additionally, the impact of any proposed residential development on the existing protected structures on site, which are listed in the NIAH, would be addressed through the development management process having regard to any relevant objectives for the subject site set out in the Development Plan and consultation with any relevant statutory bodies.
- 7.11. 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- 473449616 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 the Old Demesne Wall, a protected structure, which forms the entire public road boundary. 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- 473449616 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

1<sup>st</sup> September 2023