



An
Bord
Pleanála

Inspector's Report ABP-316900-23.

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 Brigown, Mitchelstown, Co. Cork

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT- 472963484

Appellant

Jill Mullins-Flynn

Inspector

Emma Nevin

1.0 Site Description

- 1.1. The site comprises a parcel of land, a greenfield site, located in the townland of Brigown, to the south-southeast of Mitchelstown town. The site addressed Brigown Road to the east and Railway Road to the west. Adjoining the site is a mix of uses, including residential. The has a stated area of 4.35ha.

2.0 Zoning

- 2.1. The site is zoned MD-RAP-05 under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028, with s stated objective "*Medium B density residential development to include provision for a relief road*".

3.0 Planning History

- 3.1. No relevant recent planning history located.

4.0 Submission to the Local Authority

- 4.1. The lands are not capable of being serviced.
- 4.2. The appellant cites 22/4420 as being refused in the area for wastewater treatment plant capacity issues.
- 4.3. Active agricultural lands.
- 4.4. Archaeology: site of the Old Glebe House and is adjacent to a National Monument at Brigown Old Graveyard with its pre-Norman invasion church.

5.0 Determination by the Local Authority

- 5.1. A report was received form Uisce Eireann which confirms that:
 - A watermain exists on the public road, Brigown Road, in close proximity to the site. GIS data indicates that the watermain is accessible 70 metres away, via

third party lands, adjoining the land parcel. Uisce Eireann has no information as to the ownership of the lands surrounding the land parcel.

- A sewer exists on the public road, Brigown Road in close proximity to the site. GIS data indicates that the watermain is accessible 73 metres away, via third party lands, adjoining the land parcel. Uisce Eireann has no information as to the ownership of the lands surrounding the land parcel.
- Regarding water supply, challenges currently exist in the Mitchelstown Water Resource Zone, more specifically in the Mitchelstown North Water Supply Zone. Intermittently, the level of service from this supply 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. Upgrade works are ongoing to improve the level of service.
- The WWTP 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 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. The Council in their determination on the appeal submitted an extract from landdirect.ie which appears to indicate that the adjoining land between the site and the public road forms part of the same landholding as the subject site.

5.3. 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”.

- 5.4. 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’*.
- 5.5. The Council considers that the site subject of this appeal meets with the criteria for inclusion on the final RZLT Map as the site can connect to the water services network and space capacity currently is available in the Mitchelstown water supply and WWTP.
- 5.6. The Council is aware of 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.
- 5.7. The County Development Plan objective MH-RAP-05 outlines the site as a Medium B density residential development to include provision for a relief road (MH-U-01) on part of the overall parcel and this can be provided for as part of the site development. The site is also bound by two public roads to the northwest and southwest for which it is reasonably considered that road access, footpath and public lighting can be provided for at development stage.
- 5.8. National Monuments on separate or adjacent land parcels 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 land 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 653B (c)iii(I) – (IV), and exclusions for existing uses on land. Section 653B (c)(i) and (c)(ii), respectively identify where certain uses may be excluded from the tax measure (page 28).
- 5.9. The use of land for agricultural purposes, is not considered exempt from the scope of morphine for the tax measure. Exemptions relating to land under contract is a matter for Revenue consideration and should be directed accordingly.
- 5.10. 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 as follows:

- The appellant inherited the lands from his parents, and they constitute the family home and farm. The land is a working farm.
- The lands are zoned for Medium B density to include the provision of a relief road.
- There is no planning for residential development on these lands currently and it is likely that a planning application at this time would be deemed premature due to current capacity of the Wastewater Treatment Plant in the town.
- The property was the site of the Old Glebe House and is adjacent to a National Monument at Brigown Old Graveyard with its pre-Norman invasion church. Both of these factors may have an archaeological impact on a potential planning application.
- Large scale developments in the area are being refused planning on the basis that the sewerage treatment plant in Mitchelstown has no spare capacity. This is evidenced by the recent refusal by Cork County Council to a proposed development at Cloonlough, Mitchelstown (Ref. 224420).
- Other developments prior to 2020 have been granted permission but only subject to the sewerage plant being upgraded as follows – Church Street, Mitchelstown – 18 Houses (Ref: 166646); Sliabh Alainn, Brigown – 24 Houses (Ref: 166142); and Covent Hill Brigown – 32 Houses (Ref: 185485).
- In the Covent Hill application, the Water Services report recommended a refusal of planning.

- The most recent large scale development proposal is Cork Mark Development of Georges Street, Mitchelstown and a decision is not expected on this until mid-2023 and will possibly be deemed premature.
- The lands are not capable of being serviced and are not connected to the mains services and should be excluded from the Residential Zone Land Tax Map.

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 “*Medium B density residential development to include provision for a relief road*”, under Volume 3 ‘North Cork’ of the Cork County Development Plan, 2022-2028.
- 7.2. The use of the lands for farming/agriculture purposes does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.3. The appellants reference of the zoning objective to include the provision of a relief road i.e. “*Medium B density residential development to include provision for a relief road*”, and any future application on this site being premature due to wastewater capacity issues, is not a consideration under this subsequent appeal. The provision of a relief road pertains to the development of the wider area, and as noted in the local authority determination, these would be considerations at the planning application stage, and would be addressed by the local authority 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, where relevant. As such, this is not criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.4. The site is also accessible from the public road. In my opinion it is reasonable to consider that the site may have access or be connected to public infrastructure including roads and, therefore, the site can be reasonably serviced in terms of road access, as per Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.5. In addition, the references to the site not having a current permission, the referenced adjoining large scale planning permissions, and the other referenced proposed developments in the area, does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.6. Notwithstanding the proximity of the site to the National Monument at Brigown Old Graveyard, there are no RMP or NIAH designations pertaining to this site. The impact of any proposed residential development on the adjoining National Monument at Brigown Old Graveyard, 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. As such, this does not qualify as criteria for omitting the lands from the map under Section 653B of the Taxes Consolidation Act 1997, as amended.
- 7.7. The issues raised by the appellant with respect to sufficient capacity available to service the subject lands are noted.
- 7.8. 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.
- 7.9. Notwithstanding, the requirement for upgrades to the existing network, 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 network is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.10. 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').

- 7.11. 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.
- 7.12. 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'.
- 7.13. 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.
- 7.14. The Council in their determination also state, as a matter of fact, that it appears that the adjoining land between the site and the public road forms part of the same landholding. Therefore, it is reasonable to consider that the site can 'connect' or be 'able to connect' to services.
- 7.15. 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- 492963484 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 that the lands are in use as agriculture and there is water and wastewater capacity issues in Mitchelstown and, therefore it is not reasonable to consider that there is sufficient capacity available necessary for dwellings to be developed. Any development of the site may also have an impact on the adjoining national monuments.
- 9.2. 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- 492963484 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

15th September 2023