



An
Bord
Pleanála

Inspector's Report ABP-316904-23.

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 Castle Gardens, Castle Gates, Mitchelstown, Co. Cork

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT- 475160546

Appellant

William O'Brien

Inspector

Emma Nevin

1.0 **Site Description**

- 1.1. The site comprises a large parcel of land located to the west of Georges Street to the west of Mitchelstown town centre. The site is bound by a mix of uses, including residential. The has a stated area of 7.09ha.

2.0 **Zoning**

- 2.1. The site is zoned 'MH-R-01', with a stated objective "Medium B density residential development with an appropriate buffer for the broadleaved woodland along the southern boundary. This woodland needs to be retained and protected. Retention of attractive stone wall and mature trees on the site boundary will be required", under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028.

3.0 **Planning History**

- 3.1. No recent planning history on site.

4.0 **Submission to the Local Authority**

- 4.1. The lands are not capable of being serviced. The appellant cites 22/4420 as being refused in the area for wastewater treatment plant capacity issues.

- 4.2. The access to the site is via a single vehicle access through Historic Kingston College and submission states that it is highly probable that these lands (circa 2 acres) should be de-zoned due to access issues.

- 4.3. The lands are in agricultural use.

The site is located adjacent to the former Mitchelstown Castle and may have archaeological/heritage importance.

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 the watermain is accessible 2 metres away, via the road, Castle Park, adjoining the north-eastern corner of the land parcel.
- A sewer exists on the public road in close proximity to the site. GIS data indicates that the sewer is accessible 3m away via the third-party lands adjoining the site to the north-western corner of the land parcel. Uisce Eireann has no information as to the ownership of the adjoining land parcel. Alternatively, a sewer exists 60m away from the north-eastern corner of the site in the public road, Castle Park.
- 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 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 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. 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.
- 5.5. 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.
- 5.6. The use of the land for agricultural purposes, as set out, is not consider exempted from the scope of mapping for the tax measure. Regard is had to the RZLT Guidelines which states; *“With reference to land that is included in a development plan or local area plan and is zoned solely or primarily for residential use such as ‘Residential’ or ‘New Residential’, existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future residential community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates. Local Authorities should seek input from their Rates Offices in this regard.*
- For clarity, existing uses such as shops, cafes and similar commercial uses which would be utilised by a residential community on a day-to-day basis and support the sustainable development of the community are considered to be exempted from scope. Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates”.*
- 5.7. In relation to Road access the RZLT Guidelines state; *“In considering road access, the Planning Authority must take into account the ease of access to existing road infrastructure by the identified lands. Construction of significant sections of new road access across other landholdings, should be discounted with the exception of Local Authority owned lands, where use and access are a matter for the authority”.*

- 5.8. The Council reasonably considers road access, to serve this parcel of land, to be available through lands to the north. The subject site is part of the overall MH-R-01 zoning and further access will be available via residential zoned lands to the south as developed.
- 5.9. 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 lands are currently the family home, and the lands are being used exclusively for agricultural use.
- There is no proper access to the lands. Currently access is via a single vehicle access passage over which there are shared rights-of-way and entry is gained by driving through the Historic Kingston College. The intensification of traffic through the College due to residential development would not be allowed.
- The site is adjacent to the former Mitchelstown Castle Site and Gardens and may have archaeological and heritage importance.
- 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).
- 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. It is also highly probable that these lands should be de-zoned due to the obvious access problems.

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-R-07 'Medium B density residential development with an appropriate buffer for the broadleaved woodland along the southern boundary. This woodland needs to be retained and protected. Retention of attractive stone wall and mature trees on the site boundary will be required' under Volume 3 'North Cork' of the Cork County Development Plan 2022-2028.
- 7.2. The existence of the family home and the use of the lands for 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 appellant states that there is no proper access to the site. While the single access vehicular passage to the site is noted, the site is accessible. Regard is also had to the determination of the local authority which states that access is available through the north of the site with future access via residential lands to the south of the land parcel. Any intensification of traffic, resulting from any proposed residential development on this site, 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 technical expertise and/or statutory bodies. Therefore, it is reasonable to consider that the site may have access or be connected to public infrastructure, necessary for dwellings to be developed as per 653B (b) of the Taxes Consolidation Act, 1997, as amended.

- 7.4. Notwithstanding the proximity of the site to the former Mitchelstown Caste site and gardens, there are no RMP or NIAH designations pertaining to this site. In any event, the impact of any proposed residential development on the adjoining the former Mitchelstown Caste site and gardens, 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.
- 7.5. The references to adjoining large scale planning permission and 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. The issues raised by the appellant with respect to sufficient capacity available to service the subject lands are noted.
- 7.7. 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.
- 7.8. 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.

- 7.9. 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).

7.10. 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.

7.11. 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'.

7.12. 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.

7.13. As such, the lands are considered to be serviced for residential dwellings as per as per Section 653B 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- 475160546 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 there is water and wastewater capacity issues in Mitchelstown, the lands are the family home and are in agricultural use, the proximity of the site to adjoining archaeological and heritage importance and the limited access to the site.

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- 475160546 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

8th September 2023