



An
Bord
Pleanála

Inspector's Report ABP-316964-23

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

Townland of Water-Rock, Midleton, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

DRZLT474557491

Appellant(s)

Ingram Homes Limited

Inspector

John Duffy

1.0 Site Location and Description

- 1.1. The subject lands are in the townland of Water-Rock, approximately 1.5 km north-west of Midleton town centre and circa 20 km east of Cork city.
- 1.2. Water-Rock is an Urban Expansion Area (UEA) identified as a priority growth area in Metropolitan Cork for large-scale sustainable housing delivery along the Cork-Midleton Eastern Rail Corridor.
- 1.3. Background Note
- 1.4. The lands the subject of this appeal are stated to comprise the following Land Parcels: MD-R-11, MD-R-16, MD-R-17 and MD-R-19.
- 1.5. Having examined the Midleton Land Use Map as set out in Chapter 3 of Volume 4 of the Cork County Development Plan 2022-2028 which incorporates the East Cork Municipal District, and the RZLT map of the Department of Housing, Local Government and Heritage, it appears that there are no Land Parcels in Water-Rock readily identifiable as MD-R-17 and MD-R-19.
- 1.6. While there are Land Parcels identified on the Midleton Land Use Map and the RZLT maps as MD-RAP-17 and MD-RFAP-19, I cannot be certain that these are the subject Land Parcels which the appeal relates to. Furthermore, the appellant refers to specific residential zoning objectives relating to the site (i.e. MD-R-10, MD-RAP-15, MD-R-16 AND MD-RAP-18). These are also Land Parcels in Water-Rock, however I cannot be certain that these are the subject Land Parcels to which the appeal relates. While the appellant has provided the overall Land-Use map for Midleton, a map identifying the individual Land Parcels which are the subject of this appeal is not submitted.

As such, my report will deal only with Land Parcel IDs MD-R-11 and MD-R-16, which are readily identifiable from the RZLT map and the Land Use Zoning map.

- 1.7. It is noted that the following RZLT appeals have recently been decided in respect of the following lands at Water-Rock, Midleton:
 - ABP-317065-23: This appeal related to Land Parcel MD-R-11, which is also the subject of this current appeal. The decision of the Local Authority to include the lands on the RZLT map was set aside.

- ABP-317064-23: This appeal related to Land Parcel MD-R-12. The decision of the Local Authority to include the subject lands on the RZLT map was set aside.

The appellant has indicated they are part owners of Land Parcel MD-R-11.

2.0 Zoning and Other Provisions

- 2.1. With effect from 6th June 2022 the Cork County Development Plan 2022 – 2028 replaced the 8 Municipal District Local Area Plans adopted in 2017, including the East Cork Municipal Districts LAP. Chapter 3 of Volume 4 of the Development Plan incorporates the East Cork Municipal District.
- 2.2. The subject sites (Land Parcel IDs MD-R-11 and MD-R-16) are zoned ‘Residential’ in the Cork County Development Plan 2022-2028.
- 2.3. The lands are subject to Objectives as follows:
 - MD-R-11: Medium A Density residential development to include a mix of house types and the provision of a greenway (MD-U-06) to comprise a shared pedestrian/cycle pathway and primary ecological corridor. Provision shall also be made for a local neighbourhood centre to provide a primary local retail and services function. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.3.5 and 4.3.6.
 - MD-R-16: Medium A Density residential development to include a mix of house types and the provision of a greenway (MD-U-06). The layout shall allow for permeability between housing areas for pedestrians and cyclists. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.3.5 and 4.3.6.
- 2.4. The phasing arrangements for the Water-Rock UEA are set out in Table 4.3.5 of the Plan. This sets out the Core On-site Infrastructure Programme for the Water-Rock UEA with 3 Bundles (A, B and C) of infrastructure that the Local Authority intends to deliver to facilitate the independent development of individual parcels of zoned lands.
- 2.5. Table 4.3.5 of the Plan identifies MD-R-11 as being within ‘delivery bundle A’. Key projects are identified as follows:

- Services Corridor Link Road extension to rail stop and school site (Northern Relief Road to Water-Rock Road) and associated Surface Water Network
- Water-Rock Pumping Station and Rising Main
- IW Network Extension Drinking/Potable Water Supply
- Upgrade/Realignment of Water-Rock Road (L3618)

2.6 MD-R-16 is identified as being within 'delivery bundle B.' Key projects are identified as Linear Park Phase 1: Bridge & Pathway Infrastructure for Pedestrian/Cyclist Connectivity and also Pocket Parks 1 and 2.

2.7 Text below the table states:

"Note no 1. Development of zones linked to Infrastructure Bundles B & C may commence in parallel with the delivery of infrastructure Bundle A if the following can be secured:

- *Landowners with lands in multiple bundles must build out their bundles in sequence, e.g. A to B to C.*
- *Appropriate connections to water services infrastructure and surface management systems; and*
- *Relevant on/off site road infrastructure."*

3.0 Planning History

Land Parcel ID MD-R-11

PA Reg. Ref. 226627 – Permission granted on 21st September 2023 for LRD application for a ten-year planning permission for 330 no. residential units (199 no. 3 and 4-bed dwelling houses and 131 no. 2 bed apartment units). Access to the site will be via a new vehicular access point on to the permitted services link corridor to be delivered under the Local Infrastructure Housing Activation Fund (LIHAF).

Land Parcel ID MD-R-16

PA Reg. Ref. 225839 - Permission granted on 6th January 2023 for Large-Scale Residential Development; 10-year planning permission for 400 units to be

constructed in a series of phases, a creche, a community use unit, ancillary infrastructure, services and site development works. A subsequent appeal to An Bord Pleanála was withdrawn.

Relevant condition:

58. In respect of coordinating the services connection to the LIHAF infrastructure works:

- Prior to commencement of development, the developer shall prepare and submit a comprehensive draft programme for the completion of this development. The applicant/developer shall finalise this programme to the satisfaction of the Planning Authority.

- The developer shall not connect to the LIHAF road infrastructure until after LIHAF works has reached substantial completion and at a time to be agreed with the Planning Authority.

-The developer shall not facilitate vehicular traffic from the completed development to access or egress the Water-Rock Road until it has been upgraded.

Reason: To ensure a co-ordinated approach in the delivery of the proposed access roads.

Residential Planning Applications / 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.
- 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 their lands removed from the draft map on the basis that the lands do not currently have access to the necessary infrastructure, specifically wastewater connection and roads sufficient to permit commencement of development. As such it is premature to levy the tax.

5.0 Determination by the Local Authority

- 5.1. The Local Authority determined that the lands were in scope on the basis that they meet the criteria for inclusion on the RZLT Map as set out in section 653B of the Taxes Consolidation Act 1997.

6.0 The Appeal

6.1. Grounds of Appeal

- The lands are not serviced. The services link road necessary to enable development to commence will not be completed until Q1, 2024. As such the lands are inaccessible for the purpose of commencing development.
- The Midleton WWTP has no capacity. Foul water will be carried to the Carrigwohill WWTP by way of rising main. This project is due for completion in Q1 2024.
- The lands are Tier 2 lands and must be excluded.
- The contention by the Local Authority that it would consider developer led infrastructure as an interim measure is a breach of its Development Plan.
- In terms of phasing, lands in Bundles B and C must be excluded as the Development Plan prevents their development until development of Bundle A

lands have been completed. Bundles B and C require further completion of infrastructure, the provision of which has not commenced.

- Lands can only come into scope when the development can proceed.

7.0 Planning Authority Response

- Local Authority has been working in collaboration with local landowners, state agencies and infrastructure providers at this location to facilitate the servicing and activation of the subject lands for residential / mixed uses which has resulted in a number of residential planning consents over the last year, including a permission for 400 units on the subject lands.
- Uisce Éireann (UÉ) confirms that a water main exists on the public road proximate to the site, while GIS data indicates a sewer is accessible 450m away (at The Fairways development) via third party lands.
- UÉ indicates that wastewater capacity is currently being upgraded to serve Midleton. The wastewater upgrade plan consists of an interim and medium-term solution, with delivery of the interim project in 2023.
- The lands are in scope as the required services can be provided to allow residential development to proceed as demonstrated by the multiple planning consents within Water-Rock and Midleton town.

8.0 Assessment

- 8.1. The sites identified for inclusion on the RZLT map are zoned for residential use and the Planning Authority determined that they remain on the RZLT map.
- 8.2. The grounds of appeal state that the lands are not serviced yet by the link road, which is to enable development to commence on the lands.

Section 2.2 of the Tax and Duty Manual states the following: *‘Serviced’ means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and for which there is service capacity available sufficient to enable housing to be developed. It is only when land is zoned*

for residential use and has access to necessary infrastructural services to allow for development to proceed that it is within the scope of the tax.

The appellant notes that the link road will not be completed until Q1 2024. I consider that the lands do not presently have access to road infrastructure to enable housing to be developed and as such, they are out of scope.

8.3. The grounds of appeal also raise the issue of a lack of capacity in terms of wastewater infrastructure. Uisce Éireann's wastewater treatment capacity register notes that the Midleton WWTP has a 'Red' capacity level signifying that it has no spare capacity available at present.

8.4. Uisce Éireann, as per correspondence to the Local Authority dated 3/02/2023, confirm the following in respect of wastewater treatment plant capacity:

- *As of 1st October, Midleton WWTP 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 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 Phase 1 project above.*

8.5. I note the Planning Authority's response to the appeal dated 26th May 2023 which anticipates delivery of the Interim / Phase 1 project in 2023.

8.6. 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.”

- 8.7. 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.”
- 8.8. The RZLT Guidelines are clear that the identification of wastewater treatment capacity concerns existing provision. As the potential for development of the subject lands would be upon the basis of current works being undertaken to improve capacity, I am not satisfied that the subject sites can be considered to benefit from existing wastewater treatment infrastructure capacity.
- 8.9. The lands are not served by existing wastewater treatment capacity, and as such, cannot be considered to fall within scope of the RZLT which under section 653B(b) requires that it is reasonable to consider that the lands may have access to public infrastructure.
- 8.10. I note there are permitted LRDs in respect of Land Parcel IDs MD-R-11 and MD-R-16. The lodgement of a planning application on a site does not necessarily mean that the site is serviced. In respect of PA Ref. 225839 relating to Land Parcel ID MD-R-16 I note that Condition 58 states that the developer shall not connect to the LIHAF road infrastructure until after LIHAF works are substantially completed, which is indicative of the site not being serviced at the time of the decision to grant permission.
- 8.11. In conclusion, for the purposes of the RZLT and with reference to the applicable legislation and guidance for the RZLT, my opinion is that the lands are not served by existing wastewater treatment capacity and do not yet have access to road infrastructure to enable housing to be developed. As such, the lands are not

considered to fall within scope of the RZLT which under section 653B(b) requires that it is reasonable to consider that lands may have access to public infrastructure.

- 8.12. This report has not considered the two remaining sites (MD-R-17 and MD-R-19) as referenced in Section 1.4 of this report, on the basis that the specified Land Parcel IDs are not readily identifiable on the RZLT maps and the Midleton Land Use map.
- 8.13. It is open to the board to consider these two remaining sites in the context of the Water-Rock area of Midleton not being serviced in terms of existing wastewater treatment capacity or access to road infrastructure to enable housing to be developed.

9.0 Recommendation

- 9.1. I recommend that the board set aside the determination of the Local Authority in respect of Land Parcel IDs MD-R-11 and MD-R-16 only and that these be removed from the map.

10.0 Reasons and Considerations

- 10.1. Having regard to the determination by the Local Authority, the submitted grounds of appeal, the provisions of section 653B of the Taxes Consolidation Act 1997, as amended, existing road infrastructure and wastewater treatment infrastructure capacity to serve the lands (Land Parcel IDs MD-R-11 and MD-R-16) have not been demonstrated, and as such these lands cannot be considered in-scope for the RZLT.

I confirm that the report represents my professional 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.

John Duffy
Planning Inspector

28th September 2023