



An
Bord
Pleanála

Inspector's Addendum 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

Local Authority

Cork County Council

Local Authority Reg. Ref.

DRZLT474557491

Appellant(s)

Ingram Homes Limited

Inspector

John Duffy

1.0 Background

- 1.1. The Board Direction dated 17th October 2023 directed that the status of the appeal in relation to parcels MD-R-17 and MD-R-19 be ascertained, through engagement with the parties, if necessary, in order that the Board may make a determination on the appeal.
- 1.2. To enable consideration of the appeal to proceed the appellant was requested to provide a map clearly identifying the land in their ownership to which their submission to the Local Authority on the Draft RZLT Map and subsequent appeal to the Board relates.
- 1.3. The appellant confirmed by e-mail that a map of the lands was provided on page 56 of their original submission. A map (Drawing No. 18465_IN_21_00) was subsequently submitted by the appellant's agent to the Board on 12th February 2024.
- 1.4. I note that this map comprises the following land parcels (from north to south): MD-RAP-18, MD-RAP-15, MD-R-16 and part of MD-R-10.
- 1.5. The Board issued a copy of the map received from the appellant's agent to the Local Authority seeking confirmation as to whether the land identified by the map is the land to which the appeal relates.
- 1.6. In response, by e-mail dated 26th February 2024 the Local Authority stated that the appellant in their submission identified the lands as comprising MD-R-11, MD-R-16, MD-R-17 (identified in the Cork County Development Plan as MD-RAP-17 and MD-R-19 (identified in the Cork County Development Plan as MD-RFAP-19) and the Local Authority provided a map showing these land parcels.
- 1.7. My assessment as follows relates to the land parcels located within the overall landholding identified by the appellant on the map (Drawing No. 18465_IN_21_00) submitted to the Board on 12th February 2024, which consists of the following land parcels: MD-RAP-18, MD-RAP-15, MD-R-16 and part of MD-R-10.

2.0 Site Location and Description

- 2.1. The subject lands are in the townland of Water-Rock, approximately 1.5 km north-west of Middleton town centre and circa 20 km east of Cork city.

- 2.2. 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.
- 2.3. It is noted that the following RZLT appeals have been decided in respect of the following lands at Water-Rock, Midleton:

ABP-316977-23: This RZLT appeal related to Land Parcels MD-RAP-21 and MD-R-10. The northern part of Land Parcel MD-R-10 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 on the basis that the existing wastewater services to the lands did not have existing capacity for residential development on the date of the determination by the local authority and connection to foul water networks would require works across third party lands.

ABP-317065-23 and ABP-317064-23: These RZLT appeals related to Water Rock Land Parcels MD-R-11 and MD-R-12 respectively. The decision of the Local Authority to include the lands on the RZLT map was set aside on the basis that the existing wastewater treatment infrastructure capacity to serve the sites had not been demonstrated, that connection to water and foul networks would require works across third party lands and that the sites do not have ease of connection to existing road and footpath.

3.0 Zoning and Other Provisions

- 3.1. 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.
- 3.2. The subject sites (Land Parcel IDs MD-RAP-18, MD-RAP-15, MD-R-16 and MD-R-10) are zoned 'Residential' in the Cork County Development Plan 2022-2028.
- 3.3. The lands are subject to Objectives as follows:
 - MD-RAP-18: Medium B density residential development to include a mix of house types. 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.

- MD-RAP-15: Medium A Residential Development. Any development proposal will include a detailed landscaping plan. 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.
- MD-R-10: 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.

Part of the site is also adjacent to Feeder Street MD-U-07 Link Streets MD-U-02 and Link Street MD-U-03. The roads shall be constructed up to the boundaries of the site so that they can provide access to adjacent land parcels and developments.

This site is divided between three separate landholdings which can be developed independently if necessary. However, there will be a requirement to provide connectivity and permeability through the sites for both cyclists and pedestrians.

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.

3.4 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.

3.5 Table 4.3.5 of the Plan identifies MD-R-10 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)

3.6 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.

3.7 MD-RAP-15 and MD-RAP-18 are both identified as being within ‘delivery bundle C.’ The key project identified is Linear Park Phase 2 – Development of Amenities and Facilities.

3.8 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.”*

4.0 Planning History

Subject lands

PA Reg. Ref. 225839: Permission granted on 22nd December 2022 for a 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.

Nearby sites

PA Reg. Ref. 226627 (east of subject lands): Permission granted by the planning authority on 21st September 2023 for LRD application (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). The first party appeal was withdrawn on 27th February 2024 (ABP Ref. LH04.318277).

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.

5.0 Submission to the Local Authority

- 5.1. 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.

6.0 Determination by the Local Authority

- 6.1. 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.

7.0 The Appeal

7.1. 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 lands were not serviced by 1st January 2022 and have not been serviced since.
- 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.

8.0 Local 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.

9.0 Assessment

- 9.1 The sites identified for inclusion on the RZLT map are zoned for residential use and the Local Authority determined that they remain on the RZLT map.
- 9.2 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 has stated that the link road is not scheduled for completion until Q1 2024. I note there is a permitted Large-scale Residential Development on the subject lands (PA Reg. Ref. 225839) which was granted in December 2022. The lodgement of a planning application on a site does not necessarily mean that the site is serviced. Condition No. 58 requires the developer not to connect into the LIHAF road infrastructure until after LIHAF works have reached substantial completion which is indicative of the site not being serviced at the time of the decision to grant permission.

I consider that the lands did not have access to road infrastructure to enable housing to be developed on the date of determination by the Local Authority and as such, they are out of scope.

- 9.3 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.
- 9.4 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.*

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

9.6 Section 653B, of the Taxes Consolidation Act 1997 as amended, states land 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.”

9.7 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.”*

9.8 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 lands can be considered to benefit from existing wastewater treatment infrastructure capacity.

- 9.9 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.
- 9.10 With respect to wastewater network connection, Uisce Éireann confirms that connectivity to a sewer exists in The Fairways development c 450m east of the subject lands, across third party lands.
- 9.11 Pages 25 and 26 of the Guidelines also confirm that with respect to water and wastewater, consideration of connections should take into account whether the land required to deliver the works is in the control of the applicant or the local authority. The subject lands cannot connect to the wastewater network with ease and connection would require significant works across third party lands, as such the subject site is not in scope for inclusion in the RZLT map.
- 9.12 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, would require significant works across third party lands to connect to foul drainage infrastructure 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.

10.0 Recommendation

- 10.1 I recommend that the Board set aside the determination of the Local Authority and allow the appeal.

11.0 Reasons and Considerations

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, and Section 4.1.1 (iii) of the RZLT Guidelines; existing road infrastructure and wastewater treatment infrastructure capacity to serve the lands have not been demonstrated. In addition, connection to foul water networks would require works

across third party lands. As such the 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

1st March 2024