



An
Bord
Pleanála

Inspector's Report

ABP-316976-23

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
Location	Townparks, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT472706672
Appellant(s)	Catherine White
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is located to the north west of Kennedy Parks road, west of Coolbawn Court and east of Waters Edge road. The subject site is bounded by the River Owennacurra to the west and Riverside Way to the east. There are currently buildings and hardstanding present on the site, as well as vegetation.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Existing Residential / Mixed Residential and Other Uses' under the Cork County Development Plan 2022-2028. Residential is identified as an appropriate use under the zoning Objective in the Development Plan. The site also has includes a Protected Structure (RPS ID 2,509) relating to the Iron Foundry Buildings at Kennedy Park.

3.0 Planning History

- 3.1. Reg. Ref. 226028 – Planning Permission GRANTED on 3rd May 2023 for the erection of a 2-storey dwelling within the remaining walls of the old Foundry buildings at Kennedy Park, Riverside Way, Townparks, Midleton, Co. Cork. The Foundry building is a protected structure recorded in the Cork County Development Plan under No 02509 as Iron Foundry Buildings, Kennedy Park, Midleton. The development will include necessary repairs to the existing protected structure and will include all associated site development works and connection to local public services.

3.2. Residential Planning 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.
- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.
- 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(Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.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Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.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 its land removed from the draft map. It stated that:

- The site will not have access to services until earliest Q4 2023 and then for part only of the site for one dwelling subject to planning.
- The remainder of the site cannot be developed until MFRS is complete, projected date of completion is not before 2027.

5.0 **Determination by the Local Authority**

5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- Planning consent granted for one dwelling on the site. Uisce Éireann confirm wastewater capacity will be available to facilitate development in 2023. In addition, if required, developer led infrastructure will be considered as an interim measure.
- Uisce Eireann confirm that a water main exists on the public road Kennedy Road adjoining the site, accessible 50m away. A sewer exists on the public road Kennedy Road, accessible 13m away.
- Uisce Éireann - Wastewater Treatment Plant Capacity: As of 1st October, Midleton Wastewater Treatment Plant 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 which 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 the Phase 1 project above.

6.0 The Appeal

6.1. Grounds of Appeal

- Wastewater: The site did not on or before the 1st January 2022 and does not now have access to foul sewer drainage or surface water drainage having sufficient capacity available, necessary for dwellings to be developed.
- Irish Water / Uisce Éireann confirmed 9th June 2021 and on 1st December 2022 that a wastewater connection is not available at this location due to capacity issues in the Midleton Wastewater Treatment Plant. They indicated that some limited capacity may be available in late 2023 on a first come basis and that additional capacity will be available in 2026 (correspondence enclosed).
- Surface Water: The area is not serviced by a municipal surface water system. Runoff must either be disposed of into the ground within the site or discharged to the adjoining river via attenuation tanks. Issues with soil/ground contamination have bearing on the feasibility of such works.

- The area lies adjacent to the Owennacurra and Dungourney river estuaries. Flood risks arise from both coastal and fluvial events. Site is located in flood zones A and B. The Midleton Flood Relief Scheme (FRS) is at stage 1 and won't commence for several years. In the absence of the FRS it is not possible to meet the justification requirements as set out in the Flood Risk Management Guidelines.
- The site was historically a coal gas works and subsequently a foundry and a steel works. The soil and subsoil within the site are probably contaminated due to historic use. Detailed assessment is required.

7.0 Local Authority Response

- There is an extant planning permission on part of the site for one dwelling under ref. 22/6028.
- UÉ confirms that water supply is available to serve the subject lands and that wastewater capacity is currently being upgraded to serve Midleton. Both networks are available on the R630 to serve MD-R-04. The wastewater upgrade comprises a medium term solution and interim solution – with delivery of the interim project in 2023.
- Reference to a number of residential planning consents within the Water-Rock UEA in the past year: Ref. no.'s 22/5104 (25 units); 22/5839 (400 units); 21/7264 (284 units); and 21/7265 (434 units) (currently subject to appeal ABP-314787-22). As well as pending application ref. no. 22/6627 subject to further information request. *[NB all appeals withdrawn]*.
- The planning permission granted on the subject site 22/6028 included a site specific flood risk assessment for permitted development. The planning authority accepted the overall principal of development on these lands having regard to the FRA. The planning application also included an archaeological assessment, which it was accepted that the design approach would reduce the likelihood of contaminated materials in the grounds from venting into the building.

- Reference to pages 7 and 8 of the RZLT Guidelines, specifically ‘A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.’ Reference to page 10 of the Guidelines and that land zoned with specific objectives for facilities but the extent of land not identified, will fall into scope until such time as the relevant land is developed.
- Cork County Council considers that it is ‘reasonable to consider’ the subject site ‘may have access’ to the required public infrastructure as demonstrated by multiple planning consents within Midleton and on the site itself.

8.0 Assessment

- 8.1. The grounds of appeal raise the matter of wastewater infrastructure capacity. Uisce Éireann’s wastewater treatment capacity register identifies that Midleton wastewater treatment plant (WWTP) has a ‘Red’ capacity level, indicating no spare capacity at present. The response from Uisce Éireann to the Local Authority, states that there is no spare capacity at the Midleton WWTP to cater for additional development. Projects to provide capacity are identified under two phases, the first of which comprises a load diversion to Carrigtwohill from the northside of Water Rock due for completion in 2023 (phase 1), and the second being the transfer of loading from a large portion of the town to Carrigtwohill due for completion in 2026 (phase 2).
- 8.2. Midleton WWTP is categorised as ‘Red’ with no capacity, Uisce Éireann (UÉ) has identified that in 2023 phase 1 improvement works will provide additional wastewater treatment capacity to the area via Carrigtwohill WWTP. This is in the form of a load diversion to Carrigtwohill, pumping effluent from the north side of Water Rock to Carrigtwohill. The subject site is not situated in Water Rock.
- 8.3. Section 653B, of the Taxes Consolidation Act 1997 as amended, states that for lands to be included on the map:

*“(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.”*

- 8.4. 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.*"
- 8.5. I agree with the Local Authority that the phase 1 works to divert loading to Carrigtwohill WWTP will provide additional capacity to serve development in the area and this is due for completion in 2023. However, the response from Uisce Éireann does not confirm that this capacity is in place as existing provision. The RZLT Guidelines are clear that the identification of wastewater treatment capacity concerns existing provision. As the potential for development of the subject site would be upon the basis of works to improve capacity (forming a diversion of loading to Carrigtwohill WWTP categorised as 'Green'), I am not satisfied that the subject site can be concluded to benefit from existing wastewater treatment infrastructure capacity, with Midleton WWTP categorised as 'Red', meaning no capacity, and with no confirmation that there is a current diversion to Carrigtwohill WWTP in place thereby freeing up capacity at Midleton. As a result, the subject site is not in scope for the RZLT Maps, in light of existing wastewater treatment capacity to serve the site.
- 8.6. It should be noted that largescale residential development (LRD) planning applications have been approved in Midleton, on the basis that capacity will be available to serve proposed development following planned infrastructure upgrades; with confirmation of feasibility issued based on planned upgrades. The requirement for LRDs under the Planning and Development Act (as amended 2021), is for "*evidence that Irish Water has confirmed that it is feasible to provide the appropriate service or services and that the relevant network or networks have the capacity to service the proposed development*" (section 32B(e)). The capacity of the Carrigtwohill WWTP was considered sufficient in that regard, with proposals to connect to Carrigtwohill WWTP for those individual applications in discussion with UÉ. Proposals have also included temporary wastewater treatment units to be

decommissioned on delivery of upgraded facilities by UÉ, as confirmed in the Local Authority response to the appeal. This requirement is distinct from the requirement set out for inclusion for the RZLT which is that 'public infrastructure' service capacity is 'available' for development, with the RZLT Guidelines stating the need for 'existing' capacity. The reliance upon the delivery of a project in 2023 (subject to change) to divert effluent to Carrigtwohill WWTP, or the inclusion of developer-led temporary solutions, is outside of the scope of the RZLT in this sense. However, this does not mean that individual planning applications cannot propose solutions in discussion with UÉ as demonstrated by the planning approvals in the area (see planning history in section 3 above).

- 8.7. The appeal grounds also raise matters of flood risk and land contamination. I agree with the Local Authority that given the context of the site; these matters can be addressed through the Development Management process.
- 8.8. In conclusion, the site is not served by existing wastewater treatment capacity. As such, the site cannot be considered to fall within scope of the RZLT which under section 653B(b) requires that it is reasonable to consider that a site may have access to public infrastructure.

9.0 Recommendation

- 9.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

10.0 Reasons and Considerations

- 10.1. 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 Section 4.1.1 (iii) of the RZLT Guidelines; existing wastewater treatment infrastructure capacity to serve the site has not been demonstrated.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Rachel Gleave O'Connor
Senior Planning Inspector

06 September 2023