



An
Bord
Pleanála

Inspector's Report

ABP-316977-23

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	Waterrock, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT474866564
Appellant(s)	Sean Walsh
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The appeal site relates to two parcels of land. The first is located to the south of Ballyrichard More and west of Castle Rock Avenue, with frontage to Castle Rock Avenue. The second is situated to the east of Castle Rock Avenue and with frontage onto that road, opposite to the south east of the first site. The area is characterised by one-off housing and agricultural / greenfield lands.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Residential' under the Cork County Development Plan 2022-2028. Identified as land parcels ID MD-RAP-21 and MD-RAP-10 in the plan.

3.0 Planning History

- 3.1. No record of relevant planning history on the site.

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- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.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(Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.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Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.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:

- Services are currently being constructed, but there are no completion dates.
- Inclusion of the lands is premature.

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:

- Uisce Éireann confirm that wastewater capacity will be available to facilitate development in 2023. In addition, if required, developer led infrastructure will be considered as an interim measure.
- A number of recent residential planning consents have been permitted within Water-Rock, including 22/5839, 21/7265, 21/7264.
- Uisce Éireann confirm that a water main exists on the public road L3618 adjoining the site, accessible 2m away from MD-RAP-21. A water main is accessible 10m away from MD-RAP-10 10m away via the public road it adjoins the L3618. For both land parcels, a wastewater collection network is not available in close proximity to the site, the closest wastewater network is 920m away in The Fairways development accessible via L3618 public road and third party lands to the south of Water-Rock Golf Club.
- 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

- The lands are not serviced and are not available for development now due to phasing terms.

7.0 Local Authority Response

- The subject lands are located within the Urban Expansion Area of Water-Rock in Midleton. The basis of this appeal relates to the absence of necessary services to develop the lands and that the inclusion of these lands are premature. Note a number of appeals in the area and CCC's responses to the same in relation to infrastructure provision.
- 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]*.
- UÉ confirms that water supply is available to serve the subject lands. Connection to wastewater networks would be via third party lands. The

wastewater upgrade comprises a medium term solution and interim solution – with delivery of the interim project in 2023.

- Cork County Council continues to grant consent for residential development at Water-Rock with a further interim solution of developer provided infrastructure being permitted to facilitate immediate activation. For example, under 22/5104 Consent Conditions 2, 3 and 4 allow for use of a temporary wastewater treatment unit that is to be decommissioned on delivery of upgraded facilities by UÉ.
- Solutions relating to wastewater as set out above have also been utilised by Cork County Council at Ballinglanna in Midleton (Ref. no. 22/4753 – 99 units and 21/7428 – 97 units) consent granted on the basis of a temporary wastewater treatment unit to be decommissioned on delivery of upgraded facilities by UÉ.
- 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 MD-R-04.

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 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. With respect to wastewater network connection, I also note that Uisce Éireann identify that the subject site (formed of two land parcels) is not proximate to a sewer, and connection would be approximately 920m away via third party lands to reach The Fairways further to the north west of the subject site.
- 8.8. 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 site 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.

- 8.9. In conclusion, the site is not served by existing wastewater treatment capacity and would require significant works to connect to foul drainage networks across third party lands. 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. In addition, connection to foul water networks would require works across third party lands. As such the site cannot be considered in-scope for the RZLT.

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