



An
Bord
Pleanála

Inspector's Report

ABP-317031-23

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	Lands at Knockgriffin, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	DRZLT473696912
Appellant(s)	Paul Moore
Inspector	Rachel Gleave O'Connor

1.0 Site Location and Description

- 1.1. The site is located south west of The Fairways residential estate, and south of the golf course lands in Water Rock. The subject site adjoins greenfield / agricultural lands to the north, west and south. Residential areas are present to the west of the site, with one-off housing appearing further to the east.

2.0 Zoning and other provisions

- 2.1. The site is zoned 'Residential' under the Cork County Development Plan 2022-2028. The site is made up of three land parcel IDs under the Plan, being MD-RAP-17, MD-RAP-14 and MD-R-13

3.0 Planning History

- 3.1. No relevant planning history.

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- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.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(Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.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Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.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 lands do not have access to the infrastructure necessary for dwellings to be developed. i.e. there are no roads, footpaths, storm or foul sewers serving these lands.
- The 3 no. specific zoning objectives on the landholding all require the provision of infrastructure, which includes water supply, storm and foul sewers (including pumping station and rising mains), roads, footpaths, cycle lands and public lighting – this infrastructure must be provided before the lands can be developed.
- Responsibility for the delivery of the infrastructure necessary for the lands to be developed is spread across a number of bodies/entities, including Irish Water and Cork County Council and is outside of the landowner control.
- No definitive timeframe for delivery of the infrastructure.

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 in The Fairways development, located to the northeast of the site, accessible 230m away via third party lands. A sewer is accessible in The Fairways development 230m away via third party lands.

- 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 decision by CCC did not provide a satisfactory infrastructural assessment of the landholding as required under the RZLT Guidelines.
- The lands do not have access to the infrastructure necessary for dwellings to be developed. i.e. there are no roads, footpaths, storm or foul sewers serving these lands.
- The 3 no. specific zoning objectives on the landholding all require the provision of infrastructure, which includes water supply, storm and foul sewers (including pumping station and rising mains), roads, footpaths, cycle lands and public lighting – this infrastructure must be provided before the lands can be developed.

- Responsibility for the delivery of the infrastructure necessary for the lands to be developed is spread across a number of bodies/entities, including Irish Water and Cork County Council and is outside of the landowner control.
- No definitive timeframe for delivery of the infrastructure.
- It is not in accordance with the Act and guidelines to provide an interim solution as suggested by the Council.
- The RZLT criteria relate to public infrastructure. It is inappropriate to rely on Developer Provided Infrastructure as an interim measure.
- The subject lands are currently in agricultural use apart from two no. dwellings which should not be included in the RZLT mapping. The lands are bound by the Owenacurra River to the east and undeveloped at present, to the north, south and west. The lands are not currently served by roads, footpaths, public lighting, foul sewer, drainage, surface water drainage and/or water supply. These items of public infrastructure are considered necessary for dwellings to be developed.

7.0 Assessment

- 7.1. 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).
- 7.2. 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.

7.3. 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.”*

7.4. 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.”

7.5. 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.

7.6. 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).

7.7. The appeal grounds also raise a lack of connection to road, pedestrian, water, foul water and other public infrastructure.

7.8. Page 24 of the RZLT Guidelines state that with respect to road access:

“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.”

7.9. Page 25 of the RZLT Guidelines state that with respect to footpath access:

“for lands to be considered in scope, there should be an ease of connection to an existing footpath network to facilitate active travel modes from the outset. Provision of significant sections of new footpath across other landholdings, where the land is not in the control of the landowner or local authority should be discounted when considering lands to be in-scope.”

- 7.10. The subject site is currently accessed via an informal track. The subject site does not appear to benefit from an existing connection to the public road. The appellant asserts that connection would require works across third party lands.
- 7.11. With respect to water and wastewater network connection, I also note that Uisce Éireann identify that the subject site would require connections via third party lands to reach The Fairways to the north west of the subject site. Pages 25 and 26 of the Guidelines 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.
- 7.12. The subject site cannot connect to the public infrastructure with ease and connection would require works across third party lands, as such the subject site is not in scope for inclusion in the RZLT map.
- 7.13. In conclusion, the site is not served by existing wastewater treatment capacity; would require works to connect to water and wastewater networks across third party lands; and does not have ease of connection into existing road or pedestrian infrastructure. 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. 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 water/wastewater networks, road and pedestrian infrastructure 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