



An
Bord
Pleanála

Inspector's Report

ABP-317065-23

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| 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 | Midleton, MD-R-11, (Water-Rock) |
| Planning Authority | Cork County Council |
| Planning Authority Reg. Ref. | DRZLT473500325 |
| Appellant(s) | Haven Falls Ltd. |
| Inspector | Rachel Gleave O'Connor |

1.0 Site Location and Description

1.1. The site is situated approximately 1km to the north west of Midleton Rail Station as the crow flies. To the south of the site there are industrial uses with associated sheds and hardstanding areas, with access to this industrial area from the Northern Relief Road. To the north east and west of the site there are agricultural uses. The site itself is agricultural/greenfield in character.

1.2. Background Note

1.3. The landownership extends across two sites identified by parcel ID's MD-R-11 and MD-R-12 in the RZLT maps. This appeal relates to MD-R-11, however as the sites are adjacent, the appeal documents are identical, and the landowner is treating the site as a single parcel, the appeals under reference numbers ABP-317064-23 & ABP-317065-23 have been dealt with together.

2.0 Zoning and other provisions

2.1. The site is zoned MD-R-11 & MD-R-12 'Residential' under the Cork County Development Plan 2022-2028.

2.2. Volume 4 'South Cork' of the Development Plan describes the Objective for MD-R-11 as follows:

“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.”

2.3. The Objective for MD-R-12 is as follows:

*“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. 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.**

** Flood Risk.”*

2.4. Table 4.3.5 of the Plan identifies MD-R-11 & MD-R-12 as being in '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)

2.5. 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

3.1. Current Planning Application Reg. Ref. 226627 received 25/11/2022 – 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. Decision due 21/09/2023.

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:

- Works are being undertaken by Irish Water to service the lands but this work will not be completed until Q4 2023. As the land is not currently serviced, and will not be serviced on January 1st 2023, it is premature to levy the RZLT on these lands at this time.

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 Waste Water 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.
- Wastewater sewer located 630m away. Alternative access 860m away and requires river crossing.

5.2. The local authority determined that the site was in scope and should remain on the map.

5.3. Uisce Éireann's Response to the RZLT Query confirmed the following:

- With respect to Water Networks: a water main exists on the public road, the Northern Relief Road, in close proximity to the site, 180m away via a narrow county road.
- With respect to Wastewater Networks: a sewer exists on the public road, L3656, 630m away via a narrow country road, and via the Northern Relief road and L3656. Alternatively, a sewer exists on the R626 public road, 860m away via a narrow county road and via the Northern Relief road and L3656, and would require a river crossing.
- Other – 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 taken by Cork County Council did not provide a satisfactory infrastructural assessment of the lands as required in the RZLT Guidelines;
- Irish Water have responsibility for the lands to be developed. Therefore, the development of these lands is outside of the landowner control;
- The site-specific zoning objectives on the lands include the provision of water supply, storm and foul sewers (including pumping station and rising mains), a loop road, and a greenway.
- While measures are being put in place to provide the necessary infrastructure to service the area, there is no definitive timeframe available for the delivery of this infrastructure.
- The lands require an upgrading of both the wastewater treatment plant, wastewater network and public water supply as outlined in the Confirmation of Feasibility before the site can be considered to be fully serviced.
- The works to connect the landbank to services are under the control of Uisce Éireann (UÉ). Significant connections to services will be required by UÉ to service the lands and the works to be carried out by UÉ will take place on several third-party lands.
- In relation to what Revenue state as being considered serviced land, it is important to note that the Guidelines refer to the present tense in relation to having access and capacity.
- In order for residential development to occur, provision needs to be made for the delivery of water supply, storm and foul sewers including pumping station and rising mains, and this is outside of the landowners control.
- The Council are suggesting that these lands could be serviced through the delivery of Developer Provided Infrastructure and as a result, the lands should remain within the RZLT, this is an inappropriate stance to provide an 'interim solution' to a significant issue and not in accordance with the Act or Guidelines, which require access to public infrastructure including roads,

footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, with sufficient service capacity.

- The legislation cannot be interpreted in a way which suggests that land is deemed to have prospective connection to infrastructure in lieu of additional planning applications for the provision of such infrastructure.
- Section 4.2.2 of the Guidelines state that while the aim of the tax is to activate land 'this should not result in land being considered in scope for the tax where significant works are required to enable connection to services which are outside of the control of the applicant or the relevant planning authority to enable.'

Enclosures: Copy of documentation associate with council determination with respect to RZLT; extracts from the Development Plan with respect to the zoning objectives for the site; copy of letter from Uisce Éireann, confirming that connection to networks can be facilitated, to accommodate wastewater, waste must be pumped to the Carrigtwohill WWTP, involving the construction of a pump station and rising main, Irish Water currently has a project to provide necessary infrastructure scheduled to complete in 2023 (subject to change).

7.0 Local Authority Response

- 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 a water main exists on the public road, the Northern Relief road, accessible 180m from the lands. A sewer exists on the public road, 630m from the lands.
- UÉ confirms that Midleton WWTP had no spare capacity to cater for additional development and UÉ is currently progressing projects to provide additional wastewater treatment capacity.

- However, 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.’
- Cork County Council considers that it is ‘reasonable to consider’ the subject site ‘may have access’ to the required public infrastructure as set out in the Act on January 1st 2022.

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). The appellant includes a copy of a pre-connection enquiry to Uisce Éireann which confirms that wastewater connection is not feasible without infrastructure upgrade by Irish Water, and that additional capacity to become available in 2023 will be distributed on a first come first served basis.

- 8.2. I note that the Council have based their conclusion that the site can be serviced by wastewater infrastructure upon Uisce Éireann's confirmation (dated January 2023) that first phase works to divert loading to Carrigtwohill WWTP will be completed in 2023.
- 8.3. While 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.
- 8.4. 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."*
- 8.5. 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."*
- 8.6. 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.

- 8.7. 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 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).
- 8.8. The appeal grounds also raise the lack of servicing with respect to water, sewerage and roads/footpaths. The response from UÉ confirms that water and wastewater collection network is not available in close proximity to the development lands, via a narrow county road adjoining the site, and being 180m and 630m away respectively. The RZLT Guidelines state on page 25 with respect to foul sewerage drainage that:

“Consideration of connections which would require more significant works should take into account whether the land required to deliver the works is in the control of the applicant or the local authority, as set out above.”

- 8.9. The preceding text in the guidelines clarifies that connection to services that require access to 3rd party lands may be considered out of scope. There is no certainty that the dirt track referenced by UÉ is in public ownership or within the landowners control. The appeal grounds state that connections to service the landbank would require works by UÉ over several-third party lands. As such, it cannot be concluded with certainty that the site has access to sewerage drainage via land in control of the applicant or the local authority.
- 8.10. In addition, with respect to road infrastructure, the site adjoins an industrial estate and agricultural lands. The site does not have any road frontage and it is not clear whether connection to the Northern Relief Road could be achieved via lands in the landowners control. The provision of upgrades to roads, footpaths and provision of public lighting is all within the normal proposition that would be attached to a development proposal, however, the RZLT Guidelines are clear that there should be ease of connection to the existing road and footpath network (pages 24 and 25). There is no existing footpath network proximate to the site, and there is no certainty that a road or footpath can connect to the site via publicly or landowner controlled lands, therefore the site cannot easily connect into existing road and pedestrian infrastructure.
- 8.11. I note that there is a current LRD application on the site and before the Local Authority for consideration. However, the submission of a planning application on the site does not necessarily mean that the site can be serviced, and the decision on that application is currently outstanding – and could be refused, potentially due to lack of infrastructure. In addition, as set out in paragraph 8.7 above, the considerations under the RZLT for inclusion for the map differ to legislation with respect to LRD submissions and even where the status quo position on the ground for a site is that it is not serviced, that does not prevent a developer reaching an agreement with UÉ or others to present an adequate solution to servicing provision as part of a specific development proposition on a site.

8.12. In conclusion, for the purposes of the RZLT and with reference to the applicable legislation and guidance for the RZLT, the site is not served by existing wastewater treatment capacity; would require significant works to connect to water and foul drainage networks across third party lands; and does not have ease of connection into existing road and 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.

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 water and foul water networks would require works across third party lands, and the site does not have ease of connection to existing road and footpaths. 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

18 August 2023