

An  
Bord  
Pleanála

**Board Order**  
**ABP-312855-22**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F21A/0647.**

**Appeal** by Andemar Ventures Limited care of Tom Phillips and Associates of 80 Harcourt Street, Dublin against the decision made on the 27<sup>th</sup> day of January, 2022 by Fingal County Council to refuse permission for the proposed development.

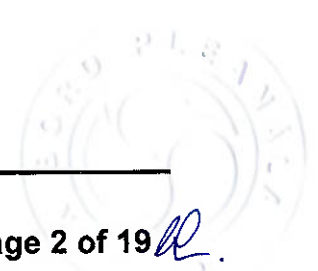
**Proposed Development:** The proposed development will consist of: the construction of 87 number residential dwellings comprising 46 number terraced houses (comprising 34 number three-bedroom two storey houses and 12 number four-bedroom three storey houses, including private rear gardens); 38 number duplex apartments (comprising 10 number one-bedroom units, 19 number two-bedroom units, nine number three-bedroom units, including balconies and terraces) arranged in two and three storey buildings; and three number three-bedroom apartment units (including terraces) above three number ground floor retail units (circa 261 square metres gross floor area in total), arranged in three storey buildings. The proposed development will also comprise: a two storey Licensed Convenience Foodstore (circa 1,315 square metre net sales area / 2,347 square metres gross floor area), including ancillary Off License sales area, ancillary storage, staff and customer facilities;

94 number undercroft car parking space and loading bay; and associated signage consisting of two number internally illuminated fascia signs (circa 5.1 square metres and circa 5.1 square metres), one number illuminated fascia sign circa 1.8 square metres, one number double sided internally illuminated pole sign to include opening hours with a total area (front and back) of circa 13.5 square metres.

The development will also include: a Civic Space (circa 1,877 square metres) located on the western side of Malahide Road; demolition, relocation and reconstruction of the existing stone wall adjacent to Malahide Road; vehicular, cycle and pedestrian access and egress points via Malahide Road (with associated works to Malahide Road comprising the provision of a cycle path, footpath and grass verge); emergency vehicular access only via Baskin Lane; 174 number car parking spaces at surface level; 88 number long-term bicycle parking spaces and 46 number short-stay bicycle parking spaces (134 number bicycle parking spaces in total); internal roads and pathways; bicycle stores; provision of private and public open spaces; play area; drainage attenuation; ESB point of supply kiosks; hard and soft landscaping; boundary treatments; changes in level; services provision and related pipework; electric vehicle charging points; ducting; SUDS features; public lighting; and all ancillary site development works above and below ground, all at lands located west of Malahide Road and north of Baskin Lane, Malahide Road, Kinsealy (also Kinsaley), County Dublin.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**



## Reasons and Considerations

In coming to its decision the Board has had regard to the following:

- (a) the nature, scale, and extent of the proposed development,
- (b) the provisions of the Project Ireland 2040 National Planning Framework,
- (c) the provisions of the Climate Action Plan 2023 – Changing Ireland for the Better,
- (d) the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities (December 2018),
- (e) the provisions of the Sustainable Urban Housing: Design Standards for New Apartments (July 2023),
- (f) the provisions of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (January 2024),
- (g) the provisions of the Eastern and Midland Regional Assembly Regional Spatial & Economic Strategy (RSES) 2019-2031,
- (h) the provisions of the Fingal Development Plan 2023-2029, including the changed alignment of the road proposal for the R107 Malahide Road upgrade,
- (i) the Kinsealy Local Area Plan 2019, including the Village Development Framework Plan, and the specified development area outlined,
- (j) the South Fingal Transport Study (2019),
- (k) the documentation submitted with the planning application, including the Natura Impact Statement (NIS), and the grounds of appeal,
- (l) the submissions and observations received on file including from the planning authority, prescribed bodies, and third parties,
- (m) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out

the proposed development and the likely significant effects on European sites,

- (n) the planning history of the site and adjoining areas,
- (o) the availability in the area of a wide range of social and public transport infrastructure, and,
- (p) the report and addendum report of the Planning Inspector.

The Board considered that the proposed residential and commercial development would provide a high-quality mixed-use development in accordance with national, regional, and local planning policy. The proposed development no longer conflicts with the R107 Malahide Road Realignment (Balgriffin Bypass). On foot of a recommendation in the South Fingal Transport Study (2019), the bypass road proposal no longer runs along the northwestern corner of the site and is realigned in the Fingal Development Plan 2023-2029.

The Board considered that the proposed amendments to the site layout received on 23<sup>rd</sup> February 2022, as part of the appeal submission, alleviate the concerns of the Inspector and the planning authority and that the reconfiguration of the residential and retail units at Baskin Lane and the increased civic space would create an attractive village square and promote a vibrant community space in accordance with 10.4.7 Development Area 4 Design Requirements of the Kinsealy Local Area Plan 2019.

The proposed development, subject to compliance with the conditions set out below, on a site zoned RV 'Rural 'Village' in the Fingal Development Plan 2023-2029 the objective of which seeks to 'Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved Local Area Plan, and the availability of physical and community infrastructure' would align with the designated development area in the Kinsealy Local Area Plan 2019 and positively contribute to compact growth

and an increase in housing stock in an area with a range of social, commercial, retail, and public transport infrastructure; would be acceptable in terms of urban design and building height; pedestrian and traffic safety; and would provide an acceptable form of residential amenity for future occupants. The proposed development would not seriously injure residential or visual amenities, or significantly increase traffic volumes, in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Since the Inspector's report was completed, new guidelines issued entitled Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities in January 2024. The Board considered the proposed development accords with the provisions of these guidelines and this is reflected in the Reasons and Considerations above.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board acknowledged the concerns of the planning authority and the issue with the road realignment but was satisfied that the Fingal County Development Plan 2023-2029 removed the uncertainty over the location of the R107 Malahide Road Realignment (Balgriffin Bypass). The Board also noted the concerns of the inspector and planning authority with the quantum of civic space and design issues but was satisfied that the amendments and reconfiguration of the proposed development received as part of the submission met the quantum and design standard of civic space required in the Kinsealy Local Area Plan 2019.

### **Appropriate Assessment Screening**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a

site in an established area, the distances to the nearest European sites, the hydrological pathway considerations, the submissions on file, the information submitted as part of the applicant's Natura Impact Statement Report, and the Inspector's report.

In completing the screening exercise, the Board agreed with and adopted the report of the Inspector which concluded that two designated sites at Baldoyle Bay, a Special Protection Area (site code 004016) and a Special Area of Conservation (site code 000199) could not be screened out, due to a direct hydraulic connection and the possibility of run-off from construction to impact on the estuarine habitat.

Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be possible that the proposed development may have a significant effect on the Baldoyle Bay Special Area of Conservation and Special Protection Area. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

### **Appropriate Assessment: Stage 2:**

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an appropriate assessment of the implications of the proposed development on the two designated sites at Baldoyle Bay, a Special Protection Area (site code 004016) and a Special Area of Conservation (site code 000199), in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

- (i) the site-specific Conservation Objectives for the European Sites,

- (ii) the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects, and
- (iii) mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's Report in respect of the potential effects of the proposed development on the aforementioned European Site.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Sites in view of the sites Conservation Objectives and that there is no reasonable scientific doubt as to the absence of such effects.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended in the appeal documents and plans received on 23<sup>rd</sup> February 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The mitigation measures identified and contained within the Natura Impact Statement, and other plans and particulars submitted with the

application, shall be implemented in full, except where otherwise required by conditions attached to this permission.

**Reason:** In the interests of clarity, and of protecting the environment and public health.

3. The developer shall provide a piece of public art or sculpture or architectural feature, to be designed in consultation with the planning authority. The piece of art shall have a relationship with the area. The location of the piece of art shall be agreed with the planning authority prior to the commencement of works on site.

**Reason:** To comply with objective DMSO194 of the Fingal Development Plan 2023-2029.

4. Details of the materials, colours, and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.



6. All service cables associated with the proposed development, such as electrical, telecommunications and communal television, shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

7. (a) The car parking spaces serving the proposed residential and commercial development shall accord with revised drawings received by An Bord Pleanála with the appeal on 23rd February 2022. The location and layout of these shall be agreed in writing with the planning authority prior to the commencement of development.
- (b) Residential car parking spaces shall be permanently allocated to residential use and shall not be sold, rented, or otherwise sub-let or leased to other parties.
- (c) Individual car parking spaces serving the apartments shall be allocated to each dwelling and provided with functioning EV charging stations/points. Ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date, unless otherwise agreed with the planning authority. Where proposals relating to the installation of EV ducting and charging stations/points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.
- (d) Cycle parking and storage shall comply with SPPR 4 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (January 2024). All cycle parking details shall be submitted to and agreed in writing with the

planning authority and shall be in situ prior to the occupation of the development.

**Reason:** In the interest of the proper planning and sustainable development of the area.

8. Public lighting shall be provided in accordance with the plans and particulars a final scheme to reflect the revised drawings received with the appeal received by An Bord Pleanála on 23rd February 2022, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to first occupation of the residential or commercial units.

**Reason:** In the interests of residential amenity and public safety.

9. Drainage arrangements, including the attenuation and disposal of surface water and wastewater arrangements, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interests of public health and surface water management.

10. The developer shall enter into water connection agreement(s) with Uisce Éireann prior to commencement of development.

**Reason:** In the interest of public health.

11. No development shall occur in the strip of riparian buffer in the northwestern area of the site, which shall be reserved as public open space.

**Reason:** In the interests of visual amenity and the proper planning and sustainable development of the area.

12. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme. A comprehensive boundary treatment and landscaping scheme shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development. This scheme shall include the following:-
- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
  - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
  - (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
  - (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

**Reason:** In the interest of visual amenity.

13. The proposed development shall be provided with noise insulation to an appropriate standard having regard to the location of the site within Dublin Airport Noise Zone C.

**Reason:** In the interest of residential amenity and to comply with objective DAO11 of the Fingal Development Plan 2023-2029.

14. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.



- (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

15. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.

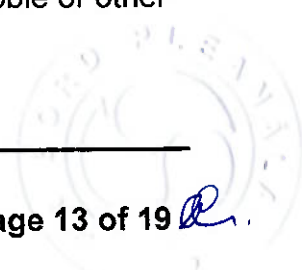
**Reason:** In the interest of residential amenity and to ensure the provision of adequate refuse storage.

16. Prior to commencement of development, the developer shall prepare a Resource Waste Management Plan (RWMP) as set out in the Environmental Protection Agency's Best Practice Guidelines for Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for

effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of sustainable waste management.

17. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
  - (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) Location of areas for construction site offices and staff facilities;
  - (c) Details of site security fencing and hoardings. Hoardings shall include a one square metre area on each frontage detailing site management contact details;
  - (d) Details of on-site car parking facilities for site workers during the course of construction;
  - (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
  - (f) Measures to obviate queuing of construction traffic on the adjoining road network;
  - (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the road network;



- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any road or footpath during the course of site development works;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- (m) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority;
- (n) A community liaison officer shall be appointed for the duration of the construction works.

**Reason:** In the interests of amenities, public health, and safety.

18. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, 0800 to 1400 hours on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of properties in the vicinity.

19. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority the details any crane operations and ensure they do not impact on flight procedures and air safety. The developer shall also notify the Irish Aviation Authority and Dublin Airport Authority of the intention to commence crane operations with a minimum of 30 days' notice of their erection.

**Report:** In the interests of residential amenity and aircraft safety.

20. No deliveries shall be taken at or dispatched from the premises outside the hours of 0700 and 2200, Monday to Saturdays, nor at any time on Sundays or public holidays. Deviation from these times will only be allowed where prior written approval has been received from the planning authority.

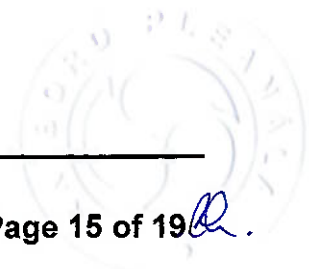
**Reason:** To protect the residential amenities of the area.

21. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the amenities of the area/visual amenity.

22. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.



23. No external security shutters shall be erected on any of the commercial premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

24. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

25. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

26. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the commercial units are made available for occupation.



**Reason:** To provide for the future maintenance of this private development in the interest of visual amenity.

27. The hours of operation of the retail unit shall be between 0800 hours and 2100 hours Monday to Sunday. Deviation from these times will only be allowed where prior written approval has been received from the planning authority.

**Reason:** In the interest of the amenities of property in the vicinity.

28. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act, 2000 (as amended), unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act, 2000 (as amended), and of the housing strategy in the development plan of the area.

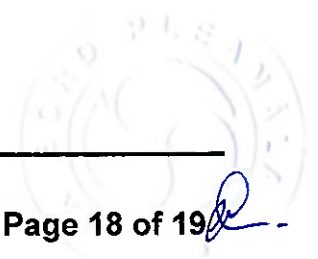
29. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of

social and/or affordable housing, including cost rental housing.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

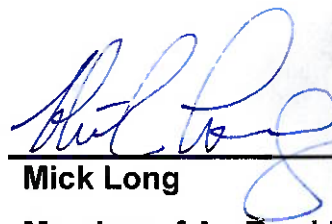
30. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer.

**Reason:** To ensure the satisfactory completion of the development.



31. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



**Mick Long**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

Dated this

*9<sup>th</sup>*

day of

*April*

2024.