



An
Bord
Pleanála

Inspector's Report ABP-312855-22.

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| Development | 87 dwellings and ground floor retail. |
| Location | Baskin Lane, Malahide Road, Kinsealy, Dublin 17. |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F21A/0647. |
| Applicant(s) | Andemar Ventures Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant | Andemar Ventures. |
| Observer(s) | Rory Wilson Sean Haughey TD. |
| Date of Site Inspection | 3 rd April 2023. |
| Inspector | Philip Davis. |

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1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for a residential/retail development in the village of Kinsealy, north County Dublin. The reasons for refusal relate to design issues and to a road reservation.

2.0 Site Location and Description

2.1. Kinsealy

Kinsealy (sometimes spelled Kinsaley) is a village in north Dublin roughly equidistant between Dublin Airport and Portmarnock. It is located on the R106 Malahide Road, between Malahide and the northern suburbs of Dublin marked by the N32. It is within a shallow valley where the River Sluice runs into Baldoyle Bay. The village has developed in the last two centuries around St. Nicholas (or Nickolas) of Myra RC church and former school on the east side of the Malahide Road, with the extensive demesne of Abbeville House formerly taking up most lands on the western side of the road. In more recent years a number of housing estates and a small retail area has developed mostly on the east side of the R106. Two third class roads run east and west from the centre. The Malahide Road at this point is relatively narrow, one lane each way and an intermittent and narrow footpath on each side. The appeal site is an agricultural field opposite (west) of the catholic church.

2.2. Appeal site

The appeal site, with an area give as 4.1 hectares, is a field in pasture roughly 280 metres north to south and 150 metres in width. It slopes downward in a north-easterly direction to the Sluice river valley. It is bounded on the east side next to the R106 by what appears to be a former demesne wall and drain. To the north is the vegetated route of the river flowing from the ornamental ponds at Abbeyville to Baldoyle Bay at Portmarnock. The southern side is bounded by a ditch and hedge, next to a busy third class road (Baskin Lane). The western boundary to more agricultural land is not marked.

Around 50 metres to the west is a large detached dwelling, with two other dwellings along the road. To the south is a commercial use and agricultural fields. To the

east, across the Malahide Road, is St. Nicholas's and a cluster of retail and residential uses known as St. Olaves.

3.0 Proposed Development

The proposed development is fully described on the site notice. In summary, it consists of:

- 87 no. residential units comprising 46 terraced houses and 38 no. duplex apartments.
- A two-storey licensed convenience foodstore (c.1,315sqm).
- A 'Civic Space' of 1,877 sqm.
- Associated works including reconstruction of existing stone wall to Malahide Road, vehicular and pedestrian access points to the Malahide road, 174 car parking spaces and 134 bike parking spaces. It also includes a reservation for a bypass of the Malahide Road

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for reasons I'd summarise as follows:

1. It is considered premature pending determination by the planning authority of a road layout of the area, specifically a proposed bypass to the west.
2. The proposed civic space is considered to be substandard by way of quantum proposed and it is contrary to the objectives set out in the Village Development Framework Plan.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- States that the works are considered to be in compliance with the zoning objective in the development plan and the LAP.

- Notes that the net density is relatively low.
- Refers to South Fingal Transportation Study, which (section 6.4.7) does not give high priority to the Kinsealy Section of the proposed R107 bypass from Clarehall to north of Kinsealy.
- Notes road reservation next to the site but indicates that this is merely indicative, and the actual alignment could be further south.
- Considers that the layout does not adequately address the potential impact of this road, in particular with regard to the potential proximity of the convenience store and apartment block to the road.
- Noted no submission from Inland Fisheries Ireland but noted that in previous applications they had requested measures to prevent run-off during and after construction.
- Notes the Civic Space is less than the 2,500 sqm set out in the LAP. It is also considered that the overall layout does not address the existing village opposite St. Olaves centre and St. Nicholas of Myra Church. The design is considered substandard and does not address the potential for integration with existing developments to the east.
- Notes concerns set out by the Parks and Green Infrastructure Section and Conservation Section about the loss of the eastern boundary wall.
- It is noted that Water Services and Parks and Green Infrastructure are not satisfied that the required 30 metres set back from the river has been maintained.
- It is stated that the proposed open space provision does not meet the minimum quantum.
- A number of concerns are set out with regard to the overall development and its impact on visual amenity, in particular with regard to visual integration with the possible new road.
- Notes that the Conservation Officer set out concerns with regard to the vista from Chapel Road.
- With regard to internal amenity, it is considered that the proposed units meet the minimum requirements set out in the development plan. It is not

considered that there would be a significant impact on nearby dwellings. It is considered that there is insufficient information on noise impacts on the proposed dwellings from the proposed bypass.

- It is considered that the commercial/community uses would strengthen the area around St. Olaves neighbourhood centre, but the proposal is absent a community space as indicated within the LAP. It is also considered that the site should have a childcare facility.
- A number of deficiencies are noted with regard to the drainage design – elements of the proposed development appear to be too close to the river.
- The flood risk assessment submitted is noted, but it is not considered that the slope within the site has been adequately addressed.
- A lack of clarity on internal parking is noted, especially with regard to ambiguity of parking spaces.
- Concerns about the quantum and quality of public spaces raised by the Parks and Green Infrastructure Division are noted. Further information required.
- The archaeological report submitted is considered adequate.
- An Ecological Impact Statement noted the need for mitigation measures to protect the Sluice River. An AA screening noted the potential for impacts on the river and the downstream SAC/SPA. It is concluded that additional information is required on this issue.
- It is concluded that permission be refused, although it is noted that the principle of developing the site is accepted.

4.2.2. Other Technical Reports

Parks and Green Infrastructure Division: It is noted that the 30 metre setback required from watercourses in objectives DMS170 and DMS171 have apparently not been applied. Revised details required. Concerns outlined about the impact on existing hedgerows. Public open space and play provision is considered substandard and inadequate. The landscaping plan is considered to be inadequate.

Transportation Planning Section: It is noted that there is no apparent distinction between parking for residents and the proposed commercial use. Overall parking provision is considered to be inadequate on the basis of the submission. Bike parking spaces are uncovered. The potential cycleway along the easter side has insufficient details. It is considered that the design does not address that the proposed bypass line is indicative only at this time. This road line is not pending, but may be required after 2029. The R107/Chapel Lane junction is at capacity. Further information required.

Conservation Officer: It is considered that there is inadequate information on various views towards Abbeville Demesne. The relationship of the Civic Plaza with St. Nicholas of Myra church is not considered to be well designed. A number of detailed design issues are set out with regard to addressing protected structures and the Chapel Road alignment.

Environmental Health, Air & Noise Unit: Acoustic Report required.

Archaeology (Heritage Officer): The overall archaeological approach as set out in the submitted Archaeology Assessment is considered to be acceptable.

Water Services: No objection, but a significant number of issues are highlighted that require further information or conditions. Noted that it is within Flood Zone C.

Housing and Community Department: Notes that a Part V agreement is required.

A letter from the **Economic, Enterprise, Tourism and Cultural Development Department** attached to the application gives consent to works on lands on the easter side of the site.

4.3. **Prescribed Bodies**

The **Dublin Airport Authority** noted Objective DA07 of the development plan and requested a condition relating to noise insulation (it is within Noise Zone C).

Irish Water: No objection subject to conditions.

4.4. **Third Party Observations**

A number of third-party submissions raised concerns regarding the proposed civic amenities and traffic safety.

5.0 Planning History

ABP-201145-18 (F17/0757): Decision to refuse permission of 81 dwellings on the site upheld by the Board. One reason: Premature pending the determination of a bypass route.

F07A/1460: Decision refused for 30 dwellings on the site for one reason – considered premature pending upgrade of water services.

6.0 Policy Context

6.1. Development Plan

The site is zoned RV 'Rural Village' in the Fingal Development Plan 2017-2023 and in the 2023-2027 Plan (which came into effect on the 5th April 2023) and in the 2019 Kinsale Local Area Plan 2019. 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*'. It is within Noise Zone C of Dublin Airport. Abbeville Demesne to the north is an ACA and there are a number of protected structures in the vicinity.

6.2. Natural Heritage Designations

There are two EU designated habitats within 10 km of the site. The river to the north drains to Baldoyle Bay, which is an SPA (site code 004016) and an SAC (site code 000199), both around 2.5km east of Kinsealy.

6.3. EIAR

The development, by way of its extent and scale does not represent a development for the purposes of Part 10 under Section 5 of the Act or fulfil criteria under Schedule 7 of the 2001 Regulations, and as such does not require EIAR.

7.0 The Appeal

7.1. Grounds of Appeal

- An overview of the design, historical context, planning context and overall design considerations are provided along with a number of photos, plans and drawings.
- It is submitted that the proposed development represents a high-quality mixed-use development that is fully in accordance with the Development Plan, LAP and other guidelines and policies.
- With regard to Reason 1 for refusal, it is noted that the South Fingal Transport Study (2019) concluded that there was no net benefit to developing the Kinsealy Section of the R107 bypass. As such, it is argued that as such the proposed development cannot be in conflict with Objective MT41. It is claimed that it is 'absurd' for a proposed development to be refused on the basis of a road which is 'no longer recommended'. It is also noted that in pre-planning discussions it was indicated that the road alignment was problematic and was not supported by all departments. It is argued that if the road alignment is required after 2029 it is inappropriate that a development should be refused on this basis. It is also noted that the planning authority did not consider the refusal to be a material contravention.
- With regard to Reason 2 for refusal, a number of minor alterations are proposed (enclosed drawings submitted, with overview provided in Figure 4.2 of the appeal submission). It is argued that these fully address the concerns raised by the planning authority on detailed design matter.
- With regard to concerns set out in the supporting reports to the main planning report, it is submitted that many of these requirements are contradictory. The applicant sets out a detailed set of tables referring to revisions and additional details provided to the Board and refers to previous submissions to the planning authority. It is argued, in effect, that all these issues can be dealt with by way of conditions.

- With specific regard to the issue of a childcare facility, it is submitted on the basis of a report from Tom Phillips and Associates that the development is below the threshold required for such a facility and one would not be viable.
- In summary, it is set out that the applicant had very detailed pre-planning discussions with the planning authority. It is submitted that the proposed development included for generous civic and public provision and that all issues raised by the planning authority can be dealt with by way of condition .
- The appeal includes appendices and plans as part of the submission.

7.2. Planning Authority Response

The planning authority restates the reasons for its decision and requests that the Board uphold the decision. If ABP decides to grant permission, it is requested that a S.48 contribution and a bond be applied.

7.3. Observations

Two Observations were submitted.

Rory Wilson, of Adelaid Road, Dublin 2

- Notes that Objective Map Sheet 9 of the Fingal Development Plan 2023-2029 does not include the R107 realignment at Kinsealy. This effectively alters and rules out reason 1 for refusal. Requests that the Board removes this reason for refusal on this basis.

Sean Haughey TD.

- Notes observation made to planning application. Requests to be kept updated on the decision.

7.4. Further Responses

None on file.

8.0 Assessment

Having inspected the site and reviewed the file documents I propose to assess the proposed development under the following general headings:

- Principle of development
- Design and context
- Traffic and transport
- Internal and external amenities
- Cultural heritage
- Drainage and flooding
- Appropriate Assessment
- Other issues

8.1. Principle of development

The appeal site is zoned RV 'Rural Village' in the Fingal Development Plan 2017-2023 and in the 2023-2029 Plan (which came into effect on the 5th April 2023) and in the 2019 Kinsale Local Area Plan 2019. The objective of this zoning 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'*. The site is within Noise Zone C of Dublin Airport. Abbeville Demesne is an ACA and there are a number of protected structures in the vicinity. An indicative road reservation runs along the north-western part of the site.

Kinsealy (Kinsale, etc.) is indicated as a 'town or village' within the development plan (the newly adopted plan is generally similar) which is the lowest level in the development hierarchy set out the core strategy, one level above rural areas in terms of policy application.

The Kinsale Local Area Plan 2019 identifies the site as zoned 'rural village' with a proposed civic space opposite the church. Part of the northern section of the site is

within the 1000 year flood risk area, with the 'indicative corridor for the R107 Malahide Road Realignment Balgriffin Bypass' running along the north-east section of the site, before crossing the Sluice River and joining the Malahide Road just south of the entrance to Abbeville. It is described in the LAP as Malahide Road West (Area 4). Section 5.4.5 of the plan states in regard to this area as follows:

Development Area 4 is located to the west of the Malahide Road and is c.4 ha. in size. The site measures c. 145 metres in an east-west direction and ranges between 280 metres and 300 metres in a north-south direction. The Development Area is bounded by the Malahide Road to the east with a continuous street frontage of c.300 metres. It is bounded by Baskin Lane to the south and by the grounds of Abbeville to the north, which is an Architectural Conservation Area (ACA). The lands to the west are under common ownership and are agricultural in nature. Access to the Development Area is currently gained via a single entrance to the Malahide Road, adjacent to the junction with Chapel Road. The Development Area is zoned Rural Village (RV) in the Development Plan. A roads proposal in the Development Plan currently runs through the north-west corner of the site and connects to the Malahide Road to the north. While the site is currently undeveloped and agricultural in nature, a planning application was lodged in December 2017 for the development of a residential scheme consisting of 81 dwellings (Reg. Ref: F17A/0757; Board Ref: ABP-301145-18). The application was ultimately refused permission.

Part 10 of the LAP provides an overview of the site. It sets a density range for the proposed development of approximately of 38-42 units per hectare, with an approximate target of 85 units in addition to commercial uses.

In addition to the development plan and the LAP, I consider that a number of national and regional policies apply, including (not exclusively):

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009);
- Design Standards for New Apartments (March 2019 and updated)
- Urban Development and Building height Guidelines 2018;
- Design Manual for Urban Roads and Streets (2013);

- Smarter Travel – A New Transport Policy for Ireland (2009-2020);
- The Planning System and Flood Risk Management (2009);
- Childcare Facilities: Guidelines for Planning Authorities (2001).

I note that the 2009 Sustainable Residential Development Guidelines strongly recommends development in smaller towns and villages be planned (i.e., through an LAP), with an emphasis on creating compact towns and villages. The scale should be proportional to the pattern and grain of existing development. While the proposed development is of a low density relative to what is considered normal for residentially zoned area, the 2009 Guidelines allow for densities of 15-20 in certain circumstances, such as the edge of a small village. In this regard, I consider the proposed density to be generally in accordance with guidelines, albeit lower than would usually be considered permissible in the north Dublin area.

In its decision to refuse, the planning authority referred to Objectives MT41, RF16 and RF17. These are as follows:

Objective MT41:

Seek to implement the Road Improvement Schemes indicated in Table 7.1 within the Plan period, subject to assessment against the criteria set out in Section 5.8.3 of the NTA Transport Strategy for the GDA, where appropriate and where resources permit. Reserve the corridors of the proposed road improvements free of development.

Objective RF16:

Ensure Rural Villages are developed in accordance with adopted Local Area Plans and accompanying Village Development Framework Plans.

Objective RF17:

Promote local distinctiveness and character through Village Development Framework Plans prepared as part of the Local Area Plan for each of the Rural Villages. The VDFPs will set out comprehensive guidelines for the urban design for all the villages.

A previous appeal on the site for a similar scaled scheme was refused for the reason that it was premature pending the confirmation of the layout of the proposed bypass.

The applicant has strongly argued that as the bypass is not included in the most recently adopted development plan (April 2023) and that the 2019 Fingal Transportation Study indicated that it would not be justified before 2029 that any refusal based on this indicative alignment is inappropriate. Notwithstanding this, the alignment is still within the current LAP and the planning authority has not formally withdrawn it and as such I would consider that it cannot be ignored. I will address the details of the alignment in more detail in the relevant section below, but in terms of plan policy, I do not consider that the Board can ignore this road alignment, notwithstanding the questionable likelihood of it being built within the lifetime of the current development plan. I note that this alignment is very indicative, and the applicant has claimed that even in the pre-meetings planning officials expressed reservations about it – I would certainly question whether it is appropriate given the environmental sensitivities of the indicated river crossing.

I would conclude that the general principle of developing this site for residential/commercial use is in accordance with the development plan, although I note that large scale development in this village is quite far down the hierarchy for development within the overall housing/development strategy for Fingal. Any grant for permission should be within the constraints and objectives set out in the LAP and the development plan for the area.

8.2. Design and context

Kinsealy village is a relatively recent settlement, having being built up around the c.1840 RC Church of St. Nickolas and the boys primary school next to it since the later 19th Century, with most development being from the past few decades. Apart from the extensive demesne land around Abbeville and the smaller Kinsealy House to the east, the area seems to have been sparsely developed until the mid-20th Century. Most of the housing and the retail village centre (St. Olaves) dates from the last 3-4 decades. With the exception of scattered housing and commercial developments along the Malahide Road, all development has been to the east of the road. The site seems to have been originally part of the Abbeville Demesne, but has long been used for grazing, although the boundary walls to the eastern side seem to date from its former use.

The land slopes gently down to the north-east, giving potential views towards St. Nickolas and towards the coast. There are potential views towards Abbeville, but these are largely blocked by vegetation along the Sluice River. The northern part of the site is low-lying and within the 1000 year flood zone of the river.

The proposed development is a generally conventional housing layout with dwellings mostly on either directly east/west or north/south alignments, with the proposed convenience store on the north-eastern side, along with a civic space between it and the Malahide Road, roughly aligned with the similar space within St. Olaves. The indicative road alignment is set out as a blank area, with landscaping and some playground areas north to the river. The main entrance is indicated on the Malahide Road, with pedestrian and emergency accesses provided to Baskin Lane and opposite Chapel Road. The proposed design is similar to the indicative layout shown in Section 10 of the LAP, albeit with more development towards the river and a greater number of houses rather than mixed use blocks.

It appears that there were extensive discussions between the applicant and the planning authority prior to the application, and the applicant has objected to what is described as contradictory requirements and the ambiguity over the indicative road alignment. I would sympathise with these concerns but I would also concur with many of the problems set out by the planning authority, in particular the poor relationship of the design to the indicative road line and the small size of the civic square. It does appear that to achieve a high number of larger dwellings on the site in addition to the convenience store, public areas have been restricted and there is significant development (mostly playground) towards the riparian zone to the north.

The applicant has suggested a number of revisions that the Board could set by condition to address these, and I note a number of possible conditions were also recommended by the various internal consultees to the Council. Given the zoning designation, I would consider that some alterations could be made that would improve matters. However, the ambiguity over the road alignment makes certainty about design changes very difficult. I also note issues with the design and location of open space on the site and the overall substandard extent of the civic space and its relationship to the overall development and ambiguities noted by the Transportation Division over carparking quanta. I would further note issues relating to the drain on the eastern side and potential impacts on the river which I will address in the Appropriate Assessment section below – I would have concerns

about any conditions significantly altering the layout would potentially change the conclusions of the NIS.

I would therefore conclude that the overall design and layout needs significant work to be in accordance with the detailed requirements of the LAP, in particular regarding clarification of the road alignment and details for the civic space and overall design of open space and the riparian zone. I therefore generally concur with the decision of the planning authority to refuse for the stated reasons.

8.3. Traffic and transport

As noted above, there is significant ambiguity about the status of the proposed Balgriffen Bypass. It is proposed to run west of the existing Malahide Road and join it in a junction just north of the site, and south of the entrance to Abbeville. This road would presumably significantly improve the current very heavy traffic on the road and the seemingly nearly constant delays at the junction with Chapel Lane and Baskin Lane. Notwithstanding this, it is clearly of low priority as indicated in the 2019 South Fingal Transport Study and may well be abandoned as a scheme. It is not referred to within the most recently adopted development plan.

The overall area is very heavily trafficked and while there is a bus stop for Kinsealy (Dublin bus nos. 42 and 43, next to the site near Chapel Lane) it seems likely that the proposed development would be very car dependent. While the provision of the convenience store would be very welcome for the village and may well reduce the need for car use, in general it will likely generate additional traffic movements, although the Transportation Division considered it to be within acceptable limits. I note, however, that the Transport Division considered that there were unacceptable ambiguities about the provision of carparking within the site and that the quantum of parking is substandard. I also note that it was considered that the quality of bike parking was also substandard (an absence of cover). The proposed access is considered acceptable.

Related to section 8.2 above, while it does seem that the proposed development could be acceptable in overall traffic terms, and there are merits to the proposed cycle path along the Malahide Road, I consider that there are significant alterations required to the design to bring it up to standard for parking and these could have impacts as to whether it is suitable according to DMURS. I consider that the needed

alterations/clarifications to the proposed design are significant to the extent that it is not appropriate to set them by condition.

8.4. Internal and external amenities

I have examined the layout and design of the individual dwellings and I am satisfied that they are acceptable in terms of internal amenity, daylight and private open space provision. I note that the area is within the airport flight path and as such a condition on acoustic protection would be required for the dwellings as recommended by the DAA.

The site does not immediately adjoin any other dwellings so I do not consider that there would be any significant impacts on the amenities of existing or permitted dwellings in the area. The planning authority had concerns about the qualitative element of some of the landscaping and open space provision, in particular near the riparian zone. If the Board is minded to grant permission I would recommend that this could be addressed through condition.

8.5. Cultural heritage

There are two protected structures close to the site. Abbeville House is described in the NIAH as follows:

Detached nine-bay two-storey over basement house, extended c.1790 by architect James Gandon, with end bows. Single-bay single-storey wings, each with a pilastered entrance doorway. Dining room is regarded as Gandon's finest surviving domestic interior. Farmyard complex to rear to designs by James Gandon.

The appeal lands were seemingly originally within the demesne of this house but is not considered now to be part of the curtilage or attendant grounds. Although within line of sight of Abbeville there is significant tree cover along the river, so there does not seem to be a significant impact, even in winter.

The site is directly opposite St. Nicholas of Myra (or St. Nickolas) RC church, which is of a strikingly unusual design for the period. It is described as follows:

Detached gabled-fronted Roman Catholic church, c.1840, on a cruciform plan with two-bay side elevation to nave. Single-bay transepts which have gabled porches attached to west elevations, and single-bay sacristy with gabled

porch attached to south elevation. Tower and spire to east. ROOF: Double-pitched; slate with granite ridge tiles and coping; pyramidal slate roof to tower crowned by wrought iron cross; some original cast-iron rainwater goods. WALLS: Nap rendered front wall with raised lettering within pediment and having statue of the Virgin contained within a niche; stone cross crowns gable; pebbledash side walls. OPENINGS: Square headed granite surround to main door; timber panelled door; round and square headed; rendered reveals; stone cill; timber sash windows with coloured glass margin panes.

There are some concerns expressed in the planning report about the alignment of the civic space with the church and it was considered that changes should be made, including the removal of one unit. In overall terms, I do not consider that the impact would be significantly negative. I also note concerns by the Conservation Section of the Council over the treatment boundary wall.

In overall terms, I consider that the impact on protected structures in the area would be relatively minor.

There are no recorded ancient monuments within the site, and no indication that there are any remains older than the 18th century demesne lands. The applicant submitted an archaeological report with a recommendation for monitoring during construction. I would consider this to be acceptable.

8.6. Drainage and flooding

The village is currently served by a pumping station that discharges to the WWTP at Malahide. Water supply is from the Ballycoolin reservoir area. There are no indications of capacity limits on either sewerage or water. Irish Water did not object to the proposed development, subject to conditions.

The site is within the catchment of the Sluice River, which flows to Baldoyle Bay, a designated SAC and SPA. A drain runs along the Malahide Road, this appeared to contain running water at the time of my site visit. The northern part of the site is within a Flood Risk C area (1000-year flood). No housing development is proposed within this zone.

The planning authority highlighted issues with the riparian zone – there is an objective such that no development (including paths, etc.,) should be within this zone. It is proposed to culvert existing drains on tie. These drains seem to be part

of overall land improvement works probably dating back to the establishment of the Abbeville demesne. I will address this issue more in the AA section below.

The proposed development is, in line with development plan policy, set according to SuDs principles. The planning authority noted a number of concerns with some details of the proposed design.

While there are a number of issues that may need to be addressed, in general I consider that the proposed development can be served by existing water and sewerage capacity and that it would not be a flood risk.

8.7. Appropriate Assessment

There are two EU designated habitats within 10 km of the site. The river to the north drains to Baldoyle Bay, which is an SPA (site code 004016) and an SAC (site code 000199). The Bay is around 2.5 km from the site. There are no other EU designated habitats within 10 km of the site.

The applicants submitted a Screening, which concluded that the above two designated sites 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. On this basis, an NIS was submitted with the application. I concur with the conclusion that all other sites could be screened out.

The two EU designated habitats are both within Baldoyle Bay, a semi-enclosed area of salt water where Portmarnock beach and dunes encloses a section of sea. The SPA qualifying interests are a number of birds, i.e. Brent Goose, Shelduck, Ringed Plover, Golden Plover, Grey Plover, Bar tailed Godwit and 'wetland and waterbirds'. These are species characteristic of mudflats and coastal zones. The conservation objective is to maintain the favourable conservation condition of the habitat for these species.

The SAC more or less overlaps with the SPA. The qualifying interests are listed as mudflats and sandflats not covered by seawater at low tide, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows and Mediterranean salt meadows.

The sole identified potential impact is sediment or other pollutants from the site (construction or operational) impacting the River Sluice, which is one of two rivers discharging into the bay. Due the relatively close distance, there is not much

attenuation, and the qualifying interest include species and habitats that are potentially sensitive to water pollution. There are no other identified pathways for impacts.

The NIS addressed relevant issues, although I note that there is no clear discussion within the document on the nature of the land drain running along the Malahide Road. The planning report indicated that this drain had running water and is, in effect, a watercourse, although the flooding report attached to the submission indicates that there is an existing main along this boundary. The drainage maps indicate that the entire drain/watercourse is to be culverted. While this is not necessarily a potential source of impact, I am concerned that this was not addressed in detail in the NIS – it may be that this was not considered a significant impact, but I am concerned that alterations to the proposed development by way of condition (in particular with regard the SuDs system, which does require elaboration in details) could require a revision of the NIS.

With regard to the details in the NIS, it sets out the standard mitigation measures required for construction and operation within the landholding and concludes that these would be in place to ensure no significant impacts on the River Sluice, and hence no impacts on the EU designated habitats downriver. I am satisfied that this conclusion is justified and correct, but I note that there are a number of details of mitigation which would have to be agreed in more detail with the planning authority and possibly Inland Fisheries Ireland prior to works commencing.

Notwithstanding my concerns outlined above, I am satisfied that in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended the NIS is adequate and addresses the key concerns and that its conclusions are correct.

Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on the Baldoyle Bay SAC and SPA. 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.

Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites No 004016 and 000199, or any other European site, in view of the sites Conservation Objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

8.8. Other issues

I do not consider that there are other significant issues raised in this appeal. I note that a Part V agreement would be required. I also note that the proposed development would be subject to a standard S.48 Development Contribution and would not be subject to any other contributions.

9.0 Recommendation

I recommend that the Board uphold the decision of the planning authority for generally the same reasons, as set out below. I note that many of the issues with the proposed development could potentially be resolved by way of a redesign of several key elements and it may be possible to do this by condition. But I conclude that the issue of the road reservation (and its potential future) significantly impacts on any attempt to develop a good quality development at this side of the site, and it may well be most appropriate if no development proceeds until the planning authority provide clarity on the route. I also note that significant elements of the civic space require revision to fully address the requirements of the LAP and that some key elements of the SuDs system need to be resolved. I do not consider that it is appropriate to address these by condition, in particular with regard to a possible need to revise the NIS.

10.0 Reasons and Considerations

1. It is indicated in the Kinsealy Local Area Plan adopted 13th May 2019 that there is a road objective for a new R107 Malahide Road Realignment (Balgriffin Bypass) running along the northwestern side of the site. This bypass alignment has not been formally withdrawn by the Council. The design of the proposed development is considered to be compromised by uncertainty over the nature of this bypass. The proposed development is, therefore, premature pending the determination by the planning authority of a road alignment for the area.

2. It is an objective for 'Development Area 4 – Malahide Road West' in the Kinsealy Local Area Plan to create an attractive and desirable Village Square within the site. It is considered that the proposed design, by way of substandard quantum of public space and design issues with the store and adjoining buildings that it fails to satisfactorily comply with the LAP objective. The proposed development would, therefore, not be in accordance with the objectives of the plan and would therefore be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

12th April 2023