



An  
Bord  
Pleanála

## Inspector's Report ABP-316683-23.

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Baskin Lane, Kinsealy, Co. Dublin.
<b>Local Authority</b>	Fingal County Council.
<b>Local Authority Reg. Ref.</b>	RZLT 008/22
<b>Appellant</b>	Andemar Ventures Ltd
<b>Inspector</b>	Irené McCormack

## 1.0 Site Description

1.1. The site comprises c. 4ha. of lands at Malahide Road and Baskin Lane, Kinsealy, Co. Dublin.

## 2.0 Zoning

2.1. The site is zoned RV – Rural Village in the Fingal Development Plan 2017-2023. This zoning Objective – *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.*

2.2. Zoning Type Description - *City/Town/Village centre or central area (M2). This sub-category is intended for those zones which cover central parts of cities, towns or villages. In virtually all cases a mix of uses is encouraged in these zones.*

2.3. 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. The “R107 Malahide Road Realignment, Balgriffin Bypass” is listed in Table 7.1

Note: Fingal Development Plan 2023-2029 was adopted by the Elected Members of Clare County Council at a Special Planning Meeting on the 22<sup>nd</sup> of February 2023. The Plan came into effect 6 weeks from the date of adoption, on 5<sup>th</sup> April 2023

## 3.0 Planning History

### 3.1. Site

**FCC Reg. Ref. F21/A/0647 /ABP 312855-22** – Permission sought for the construction of 87 residential dwellings and 3 ground floor retail units on lands located west of Malahide Road and north of Baskin Lane, Malahide Road, Kinsealy (also Kinsaley), Dublin 17.

The LA refused permission for two reasons:

1. Potential to prejudice delivery of road scheme - Road Improvements Schemes listed in table 7.1 (Objective MT41)
2. Failure to comply with Village Design Framework

**FCC Reg. Ref. F17/0757 / ABP 301145-18** – Permission refused for 81 no houses, creche, parking, access and all associated site development works on lands north of Baskin Lane, Kinsealy (also ref. to as Kinsaley), Malahide Road, Co. Dublin.

Permission refused for 1 no. reason:

*It is an objective of the Fingal Development Plan 2017-2023 to implement the Road Improvement Schemes that are listed in Table 7.1 of the plan within the plan period and to reserve the corridors of the proposed road improvements free of development (Objective MT41).... The proposed development is, therefore, premature pending the determination by the planning authority of a road layout for the area. It is considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

#### **4.0 Submission to the Local Authority**

- The lands are sterilised from development given the presence of an existing development plan objective to provide a new road proposal across the site – Objective MT41.
- Reference to planning history on the site and that the absence of LA providing infrastructure is prohibiting development.
- Reference to Draft Fingal development plan 2023-2029 and the omission of proposed route and riparian corridor objectives. Reference also to Kinsealy LAP.

#### **5.0 Determination by the Local Authority**

- 5.1. The legislation does not provide any exclusion for lands on the basis of an objective in a development plan or local area plan.
- 5.2. The local authority determined the site to be in scope and should remain on the map. The local authority consideration stated that land is zoned and serviced.

#### **6.0 The Appeal**

##### **6.1. Grounds of Appeal**

- The appeal reiterates the contents of the submission to the PA as set out above.

- The planning history on the site establishes that there exists an impediment to the development of this site whereby the 'RV' zoning objective governing the site is at odds with the Local Objective MT41 of the Fingal development plan 2017-2023.
- The road proposal is considered to meet criteria of Section 653B(c)(iii)(II) as being lands being required to provide for 'transport facilities and infrastructure' and also Section 653B(c)(iv) as lands that have a statutory designation which preclude development
- Conclusion – lands or part of the land be removed from the RZLT.

## 7.0 Assessment

7.1. The legislation clearly sets out that land in scope will be zoned for residential development or a mixture of uses including residential; be serviced or have access to servicing by water, wastewater, road, footpath and public lighting; and not be affected by contamination or significant archaeological remains which would preclude development taking place.

7.2. Section 3.1.2 *Exclusions from the Map* of the guidelines state that exclusions of particular lands as set out in the legislation and as clarified in the guidelines should be taken into account. With specific reference to *Land Required for Infrastructure and Community Services* the guideline state:

“As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities....

Accordingly, a significant number of uses which may be required or are provided on either residential or mixed-use lands which permit housing are to be excluded from maps to accompany the Residential Zoned Land Tax.

These are clearly set out in Section 653B(c)(iii)(I) – (VII) and include; (II) transport facilities and infrastructure.

7.3. In relation to Objective MT41, I would note that the “R107 Malahide Road Realignment, Balgriffin Bypass” is a proposed road scheme listed in Table 7.1 of the Development Plan. Map 9 of the CDP 2017-2023 details a route corridor extending to the west of the existing R107 from north of Kinsealy Village to the R139 to the

south. The indicative line of the proposed road scheme runs through the northern section of the appeal site.

- 7.4. The guidelines state that where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out. Therefore, by virtue of the fact that the route layout is indicative only and cannot be definitively defined, it is reasonable to consider that the entirety of the land is in scope.
- 7.5. The appeal grounds do not raise any exclusions that would apply to the subject lands and warrant its removal from the map, with reference to the Taxes Consolidation Act 1997 as amended and the RZLT Guidelines

## 8.0 Recommendation

- 8.1. I recommend that the Board confirm the determination of the local authority and direct the local authority to include the site on the map.

## 9.0 Reasons and Considerations

- 9.1. The site is part of an established urban area with services available and no capacity or other reasons have been identified that would prevent the development of these lands for residential purposes. The site does satisfy the criterion for inclusion on the map set out in section 653B(c) of the Taxes Consolidation Act 1997, as amended.

I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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Irené McCormack  
Senior Planning Inspector

11th August 2023