



04 April 2023

For the Attention of: Ms. AnnMarie Farrelly, Chief Executive

Fingal County Council
County Hall
Main Street
Swords
County Dublin
K67 X8Y2

Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to Issue a Direction to Fingal County Council
regarding the Fingal Development Plan 2023-2029

Dear AnnMarie,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 22nd March 2023 in connection with the Fingal Development Plan 2023–2029, as adopted by the elected members of Fingal County Council on 22nd February 2023, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Fingal County Council to take certain measures specified in this notice.

Opinion

On consideration of the recommendation made to me by the Office, I have formed the opinion that:

- (i) Fingal County Council, in making the development plan, has failed to implement recommendations made to it, as planning authority, by the Office under section 31AM of the Act;
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (iii) The Plan is inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES);
- (iv) The Plan, as made, is not in compliance with the requirements of the Act.



A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons incorporated in the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

Process to Date

The draft Fingal Development Plan 2023–2029 (the draft Plan) was on public display from 24th February 2022 to 12th May 2022. The Office of the Planning Regulator made a submission to the draft Plan on 12th May 2022, containing seventeen (17) recommendations and six (6) observations which addressed a broad range of issues.

The elected members, having considered the draft Plan and the Chief Executive’s Report on submissions received (dated 28th July 2022), resolved to amend the draft Fingal Development Plan 2023–2029. Subsequently, you sent a notice letter under section 12(5)(aa) of the Act to the Office specifying the recommendations of the Office that were not complied with.

In particular, no amendments were made to address Recommendation 11 of the Office’s submission in relation to Employment Zoned Land.

The material alterations to the draft Plan were on public display for an extended period from 11th November 2022 to 22nd December 2022. The Office made a submission on 22nd December containing seven (7) recommendations and two (2) observations. The Office’s recommendations at the Material Alterations stage included:

- MA Recommendation 5 – Employment Zoned Land
- MA Recommendation 6 – Noise standards

The submission also noted the decision of the planning authority not to comply with Recommendation 11 of the Office’s submission to the draft Plan.

The elected members of Fingal County Council resolved to make the Fingal Development Plan 2023–2029 at a council meeting on 22nd February 2023. Subsequently, the planning authority issued a notice letter under section 31AM(6) of the Act to the Office advising of the making of the Development Plan and specifying the recommendations of the Office that were not complied with.



Having reviewed the Chief Executive's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the items below, the recommendations of the Office have been responded to and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context. The outstanding matters, therefore, relate to the following:

- Employment Zoned Land – Recommendation 11 and MA Recommendation 5;
- Noise standards – MA Recommendation 6.

Summary of Issues

OPR Recommendation 11

Recommendation 11 of the Office's submission to the draft Plan required the planning authority to provide a robust justification for the extent and location of employment zoned lands in the draft Plan and to demonstrate that the criteria set out in specified national and regional policy has been satisfied. Particular attention was drawn to land zoning objectives at specified locations. Where an evidence-based rationale could not be provided the recommendation stated that the subject zoning objective should be removed from the draft Plan.

Specified lands in Recommendation 11 included the following, which correspond to the locations set out in section 2(a) of the draft Direction, with modified descriptions in some instances.

- lands zoned General Employment at the Junction 2 of the M2 at St Margaret's;
(The above description has been refined in the draft direction, and specifies the zoning objective of the lands in the previous development plan for identification purposes.)
- lands zoned as Rural Business Cluster and Food Park located to the south of Coolquay rural village and south west of Corrstown Golf Club;
(The above description has been refined in the draft Direction to clarify the first mentioned zoning is Rural Business and the two locations have been subdivided into separate items as per the Office's recommendation.)
- lands zoned as General Employment (circa 73ha) south of Balbriggan which extends across both sides of the M1;



(The above description has been refined in the draft Direction to a smaller area of expansion to the south east of M1 Junction 5 as per the Office's recommendation.)

It is noted that you, as Chief Executive, did not support any of the above zoning objectives and recommended against their inclusion in the Plan. The elected members decided to make the Plan contrary to your recommendation and the recommendation of the Office.

The section 12(5)(aa) notice indicates the reason given by the elected members was in order to provide for a sufficient supply of employment zoned lands to enable the growth of employment generating businesses in Fingal.

The Office has concluded this does not provide a robust justification for the extent of lands zoned. Furthermore, it runs contrary to the evidence that was before the elected members at the time of the decision, which indicated a significant quantum of existing undeveloped employment land in the county.

The reason also does not provide an evidence based rationale for the zoning objectives in accordance with the Development Plan Guidelines and no, or no adequate, reasons have been provided to explain why the said Guidelines have not been followed as per the requirements of the Act. Furthermore, the zoning objectives are inconsistent with national policy in respect of greenbelts, regional policy in respect of sustainable travel and employment lands, and the Greater Dublin Area Transport Strategy. Please see the statement of reasons provided for specific details.

MA Recommendation 5

Having regard to National Strategic Outcome 1 (Compact Growth) and National Policy Objectives 11 and 62 of the National Planning Framework, Regional Policy Objectives 4.82 and 5.6 of the Regional Spatial and Economic Strategy for the Eastern and Midland Region, and section 6.2.5 of the Development Plans, Guidelines for Planning Authorities, the planning authority was required to make the Plan without material amendments PA SH 12.4 - Newtown, St Margaret's. This corresponds to the lands referred to in section 2(b) of the draft Direction.

Having regard to the issues raised in the submission by the OPR, you, as Chief Executive of Fingal County Council recommended that the Plan be made without material alteration PA SH 12.4. The elected members voted to include the amendment contrary to your recommendation and the recommendation of the Office.



The section 31AM(6) notice indicates the essence of this alteration is to retain the map based local objective relating to a road upgrade, which was part of the material amendment, in an effort to ensure road safety at the location.

The Office has indicated while it appreciates the intention of the elected members in respect of the widening and upgrading of Kilshane Road, it is not a sufficient basis for rezoning 38 hectares of Greenbelt lands in a location that does not support sustainable travel patterns.

Futhermore, no evidence based justification has been provided for the rezoning of the lands, whereas detailed analysis was undertaken to demonstrate that the quantity of zoned land would more than meet projected employment growth over the plan period.

Consequently, no strategic rationale to underpin the zoning of further land for employment purposes at this location has been provided in accordance with Section 6.2.5 of the Development Plans Guidelines, and no or no adequate reasons have been provided to explain why the Guidelines have not been followed, as required by the Act.

MA Recommendation 6

Having regard to section 10(2)(d) of the of Planning and Development Act 2000, as amended, and NPO 65 to promote pro-active management of noise and to support the Noise Action Plans, the planning authority was required to make the Plan without PA CH 8.1.

The Chief Executive's report noted that it is considered to be beyond the scope of, and is not the remit of the Plan to include the text as set out in the material alteration, which relates to, inter alia, the adequacy or otherwise of the insulation scheme.

The Chief Executive's report further advised the elected members that the Aircraft Noise Competent Authority (ANCA), rather than the planning authority, is responsible for ensuring that noise generated by aircraft activity at Dublin Airport is assessed in accordance with EU and Irish legislation and to ensure that the ICAO Balanced Approach is applied where a noise problem at the airport is identified.

The Office indicate that PH CH 8.1 addresses matters that are the subject of other legislative provisions and creates conflict with and uncertainty in the application of, such legislative provisions and policies and is therefore inconsistent with NPO 65 of the National Planning Framework.



The elected members rejected the recommendation of the Chief Executive and approved the material alteration with modified text indicating that the alteration ensures consistency with another objective in the plan and that health issues are a matter of importance for inclusion in the Development Plan.

However, the reasons given do not address the substantive issue in the recommendation that there is no basis relating to proper planning and sustainable development for the introduction of material amendment PA CH 8.1, which matters should be determined through the appropriate statutory processes, including the preparation of the Noise Action Plan.

In light of the above, the Development Plan made by Fingal County Council fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of Section 10(1) of the Act and is not in compliance with the requirements of the Act.

Decision

On review of the recommendation issued by the Office, corresponding documents and analysis, I, as Minister, am of the opinion to issue a draft Direction and in that regard, I refer you to the Statement of Reasons set out in the enclosed draft Direction and the considerations below.

I, as Minister, consider that the plan as made:

- is not in compliance with the provisions of the Act including:
 - Section 10(1), which requires the development plan to set out an overall strategy for the proper planning and sustainable development of the area.
 - Section 28, as the statement under section 28(1A)(b) that is appended to the development plan fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives of the Minister contained in the Development Plans Guidelines (2022) and the Spatial Planning and National Roads Guidelines (2012); because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to section 28(1B)(b).



- Is inconsistent with the National Planning Framework, in particular NPO 62 which seeks to strengthen the value of greenbelts and green spaces at a regional and city scale, and NPO 65 which seeks to promote the pro-active management of noise through Noise Action Plans.
- Is inconsistent with the Regional Spatial and Economic Strategy for the Eastern and Midland Region specifically RPO 5.3 (MASP sustainable travel), RPO 5.6 (MASP employment lands), and RPO 8.4 (consistency with the Greater Dublin Area Transport Strategy).
- fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - the Development Plans, Guidelines for Planning Authorities (2022);
 - the Spatial Planning and National Roads, Guidelines for Planning Authorities (2012);

The Development Plan has also not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31AM.

Having regard to the matters set out, above, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area and is not in compliance with the requirements of the Act.

Measures to be taken – Draft Direction

Accordingly, having considered the recommendation of the Office, I am issuing a draft Direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Fingal County Council with regard to the Fingal Development Plan 2023-2029.

In accordance with section 31AN(1) of the Act, having considered and taken account of the proposed draft direction submitted by the Office, the draft Direction as issued by the Minister incorporates minor descriptive amendments which are not material in nature and do not alter the substance of the Office's recommended draft direction but provide additional clarity in order to aid its interpretation. In this regard I highlight the following matters in relation to the draft Direction, as issued:

- Section 2(a)(i) now indicates the zoning objective of the lands in the 2017-2023 Fingal Development Plan for information purposes only in order to aid



identification and provide certainty (consistent with the approach employed at Section 2(a)(iv)).

- Section 2(a)(iv) now indicates that the lands in question are located in the townland of Hedgestown, Courtlough, south east of Junction 5 on the M1 in order to address an identified anomaly in the mapping appended to the Section 31AM(8) notice received.

Accordingly the draft Direction, as issued, sets out the following steps for the Planning Authority to take:

- (a) Delete the following zoning objectives from the adopted Plan i.e. the subject land is unzoned:
 - (i) Land zoned General Employment in the adopted Plan to the east of Junction 2 on the M2 at St Margaret's which was zoned Greenbelt in the Fingal County Development Plan 2017-2023.
 - (ii) Land zoned Food Park in the adopted Plan south of Coolquay village.
 - (iii) Land zoned Rural Business in the adopted Plan to the south of Coolquay village.
 - (iv) Land zoned General Employment in the adopted Plan to the south east of Junction 5 on the M1 at Hedgestown, Courtlough which was zoned Rural in the Fingal County Development Plan 2017-2023.
- (b) Reinstate the Greenbelt zoning objective for lands PA SH 12.4 Newtown i.e. the subject lands revert to Greenbelt from General Employment consistent with the recommendation of the chief executive's report dated 15th January 2023.
- (c) Delete the amended and additional text inserted under PA CH 8.1 as modified, consistent with the recommendation of the chief executive's report dated 15th January 2023.

Please note that in accordance with Section 31(4)(c) and Section 31(6) of the Act, those parts of the Fingal Development Plan 2023 – 2029 referred to in this notice shall be taken not to have come into effect, been made or amended.



Next Steps – Procedural requirements

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive, under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft Direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft Direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

In accordance with Section 31(9) of the Act, the report of the Chief Executive must:

- (a) summarise the views of any person who made submissions or observations to the planning authority;
- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- (c) summarise the views of and recommendations (if any) made by the regional assembly, and
- (d) make recommendations in relation to the best manner in which to give effect to the draft Direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final Direction.



Where the Office is of the opinion that a material amendment to the draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway.

Yours sincerely,

Kieran O'Donnell
Kieran O'Donnell TD

Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Fingal County Council, County Hall, Main St, Swords, Co. Dublin, K67 X8Y2.
- Mr. Jim Conway, Director, Eastern and Midland Regional Assembly, 3rd Floor North, Ballymun Civic Centre, Main Street, Ballymun, Dublin 9, DO9 C8P5.
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.