

**THE HIGH COURT
JUDICIAL REVIEW**

[2023] IEHC 345

[2021 No. 778 JR]

BETWEEN:

LOUISE MURTAGH

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 29th day of March 2023.

1. This is a challenge to a decision of An Bord Pleanála (the Board) dated 5 July 2021 (the decision) to decline to grant planning permission to Louise Murtagh for proposed development of a house at Faughanhill, County Meath.
2. Louise Murtagh asserts that the Board incorrectly treated provisions of the National Planning Framework as “higher tier” policy, overriding provisions of the County Meath development plan (the development plan), relating to permissions for development of single dwellings in rural areas. She also asserts that the Board incorrectly treated ministerial guidelines issued in 2005 as overriding provisions of that development plan. She complains that the decision was irrational because it applied criteria relating to urban-generated housing to her application.
3. She also asserts that the Board was incorrect in refusing permission on grounds that the proposed development would materially contravene conditions in two 2005 planning permissions which required agreements under s.47 of the Planning and Development Act 2000 (the 2000 Act) that the site of her proposed dwelling be sterilised for use other than agricultural use.
4. The Board rejected Louise Murtagh’s appeal from a refusal by Meath County Council to grant planning permission for this house for three reasons. Two of the reasons are invalid. The third reason is a valid stand-alone reason. This is sufficient to support the decision. It follows that it is not appropriate to set that decision aside.
5. This decision refers to a planning inspector’s report dated 16 May 2021. It reads as follows:

“The Board decided to refuse permission, generally in accordance with the Inspector’s recommendation for the following reasons and considerations.

Reasons and Considerations

1. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005, wherein it is policy to distinguish between urban generated and rural generated housing need, and in a "Strong Rural Area" as identified in the Meath County Development Plan 2013-2019 (as varied). Furthermore, the subject site is located in an area that is designated under urban influence where it is national policy, as set out in National Policy Objective 19 of the National Policy Framework, published by Government in February 2018, to facilitate the provision of single housing in the countryside, based on the core consideration demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. Having regard to the information submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area, or that the housing needs of the applicant cannot be met in a nearby town or settlement.

It is considered that the proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment. The proposed development would be contrary to the Ministerial Guidelines and to over-arching national policy and having regard to the relevant provisions of the Meath County Development Plan 2013-2019 (as varied). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would establish an undesirable precedent for further development of this type. In addition, the proposed development would be contrary to the policies and objectives, as set out in the Meath County Development Plan 2013-2019 (as varied) which seek to provide more sustainable formats of development within the rural area, through supporting the vitality of lower order centres and existing local community facilities including policies/objectives RD POL 4, RD POL 8, RUR DEV SO 5, CS OBJ 10 and RD OBJ 1. Such policies and objectives are considered to be reasonable. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The development contravenes materially conditions attached to existing permissions for development namely, condition number 3 of KA/40669 and condition no 3 of KA/40653 which provide for the sterilisation from any housing or non-agricultural development on the entire remainder or the landholding of which the appeal site forms part. The requirements of those conditions are considered reasonable having regard to the existing level of development in the area."

6. The conclusions of this Court are as follows:

- A. The Board incorrectly concluded that the proposed development is located in an "Area Under Urban Influence" as set out in the Sustainable Rural Housing Guidelines for Planning Authorities of 2005 (the Guidelines). The relevant development plan was prepared in accordance with the Guidelines. It specifies that the site is in a "Strong Rural Area" and not in an area under Urban Influence. Designation of character of the area for the purposes of the Guidelines was a competence of the planning authority. The development plan specified policies and objectives applicable to rural housing as a result of its designation of the character of rural areas.
- B. The Board incorrectly gave primacy to an element National Policy Objective 19 of the National Policy Framework (NPF) which refers to "rural areas under urban influence" over designation of the area in which the proposed development is located as a "Strong Rural Area" in the development plan. The Board disregarded para. 10.4 of the development plan. It assessed whether Louise Murtagh had demonstrated an "economic or social need" to live in a rural area without reference to that provision and introduced a requirement that she show that her housing needs could not be met in a nearby town or settlement.
- C. "Contravention" of conditions in 2005 planning permissions which required landowners to commit to agreements not to engage in further development on Louise Murtagh's plot was not relevant. Existence of these conditions in earlier planning permissions is not a basis on which an application for permission may be refused. The proposed development, if proceeded with, would not "contravene" the condition. The decision-makers was not being asked to make a judgment on whether the requirements of these conditions were reasonable.
- D. Courts cannot interfere with decisions made by the Board in proper exercise of planning judgment. While Louise Murtagh has

challenged the conclusion of the Board that the proposed development would give rise to an excessive density of development, she has not shown that the Board made any reviewable error in arriving at this conclusion. She has not demonstrated that this evaluation was an improper exercise of planning judgment. The Board did not act improperly in arriving at the conclusions set out in para. 2 of its decision.

- E. Any decision may be made for a number of reasons. Some of these reasons may be valid and some may be invalid. Some reasons for a decision may be more important than others. It does not follow that an invalid reason will automatically result in an invalid decision.
 - F. Decision-making often involves cumulative evaluation of relevant material. However, this is not always the case. Some elements of evaluation may involve cumulative analysis and others may involve determination of a decisive stand-alone issue. If it is clear from the terms of a decision that the decision-maker has made a stand-alone determination in a particular way on a decisive issue, then all conclusions on other matters which might have been decided differently are irrelevant. Errors of fact or law in coming to those conclusions do not affect the end result.
 - G. Para.2 of the Board's decision is a stand-alone determination on a decisive issue. Any deficiencies identified in the reasoning in paras.1 and 3 of that decision do not affect the validity of the reasoning in para. 2.
7. Louise Murtagh lives in Faughanhill County Meath with her mother. She works in as a cleaner in a local school. Faughanhill is designated in the development plan as a "Strong Rural Area". Louise Murtagh's need for housing fell to be assessed by decision-makers examining her application for planning permission for a dwelling at Faughanhill as a "rural generated housing need".
 8. The site of the proposed dwelling is at the corner in the middle of an "L" shaped cul-de-sac to the east of a minor road running from north to south which separates the townlands of Faughanhill and Oldtown. The map exhibited shows ribbon development of houses on the minor road and seven or eight houses in the cul-de-sac.
 9. Over the years a number of applications for planning permission for houses on nearby land were turned down. These included applications by relations of Louise Murtagh. These also included unsuccessful applications for retention permission relating to a house which was the subject of the Supreme Court decision in Meath County Council v. Murray [2018] 1 I.R. 189. In 2006 Louise Murtagh made an unsuccessful application for planning permission to build a house on her site.

10. Excessive density of development was a feature of the reasoning for most of the refusal decisions. Only two permissions were granted and these included a requirement for "s.47 agreements" to ensure a density of development appropriate to a rural area and to protect agricultural land. These permissions were granted to relations of Louise Murtagh in 2005. They enabled two of her relations to build houses on nearby sites.
11. Each of these permissions included a condition requiring a restrictive covenant agreement under s.47 of the 2000 Act precluding further non- agricultural development on the rest of the landholding which included these sites. The Board claims that this landholding also included Louise Murtagh's site.
12. These conditions were not complied with. There is no evidence that these agreements were executed by owners of the undeveloped part of this landholding. Louise Murtagh disputes that her site was originally part of this landholding. She states that she derived her title from land in different ownership.
13. Section 47(5) of the 2000 Act requires that particulars of such any agreements must be noted on the planning register. This type of agreement must be registered as a burden if it is to bind a transferee for value of registered land: see ss. 52(1) and (2) and 69(1)(k) and (r) of the Registration of Title Act 1964.
14. Agreements under s.47 of the 2000 Act can be enforced by injunction. Their principal role is to enforce the agreed restrictions by discouraging sales to potential purchasers. Land and residential units are less saleable if they are subject to covenants which restrict development or disposal for general occupancy. Sterilisation agreements, had they been executed, would have enabled the planning authority to prevent further development on the land on a contract basis and not on a planning basis.
15. This type of agreement, or a condition in a planning permission requiring execution of same, cannot pre-determine the result of any subsequent application for planning permission to carry out development on land. Any application for planning permission must be decided solely by reference to criteria set out in s.34(2) of the 2000 Act.
16. The planning authority and the Board were entitled to have regard to the planning history of the site and the surrounding area. The rationale for imposition of sterilisation conditions in the 2005 planning permissions was relevant to the Board's consideration of Louise Murtagh's current application. That rationale might continue to apply on the basis that the 2005 permissions were exceptional and that further development close by remains inappropriate.
17. However, the manner in which para.3 of the Board's decision is expressed elevates the status of these planning conditions to the equivalent of zoning under the development plan and proceeds on the basis that they have some sort of legal effect on "the entire remainder of the landholding of which the appeal site forms part," which they do not.

18. Rural development strategy for County Meath is set out in Chapter 10 of the development plan. Para. 10.2, dealing with "Rural Development Strategy," states that: "Rural Development should be consolidated within existing villages and settlements that can build sustainable rural communities as set out in the National Spatial Strategy 2002-2020 and Regional Planning Guidelines for the Greater Dublin Area 2010-2022. The Development Plan seeks to accommodate rural generated housing needs where they arise, subject to local housing need criteria and development management standards. The Department of Environment, Heritage and Local Government published Sustainable Rural housing Guidelines for Planning Authorities in April 2005 and issued a circular SP5/08 which provides advice and guidance in relation to local need criteria and occupancy conditions."
19. The development plan has been prepared in accordance with the Guidelines. It identifies rural area types, including rural areas under strong urban influence and strong rural areas as contemplated by Para. 3.2 of the Guidelines. It incorporates development objectives for these areas as contemplated by Boxes 1 and 3 in Appendix 3 of the Guidelines.
20. The rationale for this approach is explained in Para 3.2.1 of the Guidelines which reads as follows: "Having defined the rural area types in the development plan as set out in the planning authorities must then tailor policies that respond to: (1) The differing housing requirements of urban and rural communities, (2) the varying characteristics of rural areas."
21. The next sentence is in heavy print for emphasis and reads as follows: "These distinctions are necessary to ensure that first and foremost the housing requirements of persons with roots or links in rural areas are facilitated in all such areas and that planning policies also respond to local circumstances whether these relate to areas experiencing economic and population decline or to areas under substantial pressure for development."
22. The development plan sets out the following goal: "To ensure that rural generated housing needs are accommodated in the areas they arise, subject to satisfying good practice in relation to site location, access, drainage and design requirements and that urban generated housing needs should be accommodated within built-up areas or land identified through the development plan process."
23. The development plan then sets out Rural Development Strategic Policies 1 and 2. (RUR DEV SP 1 and RUR DEV SP 2) These require that planning decision-makers differentiate between rural generated housing demand and urban generated housing demand in different types of rural areas set out in the development plan and "ensure that individual house developments in rural areas satisfy the housing requirements of persons who are an intrinsic part of the rural community in which they are proposed, subject to compliance with normal planning criteria. An assessment of individual rural development proposals including one-off houses shall have regard to other policies and objectives in this development plan."

24. Para.10.4 of the development plan, dealing with "Persons who are an Intrinsic Part of the Rural Community" specifies that: "The planning authority recognises the interest of persons local to or linked to a rural area who are not engaged in significant agricultural or rural resource based occupation to live in rural areas." Louise Murtagh comes within this category of rural resident as she has "spent a substantial period of (her) life as a member of the established rural community.... and (does) not possess a dwelling..."
25. The development plan gives more definitive support to those who can demonstrate a genuine need for a dwelling on the basis of significant involvement in agriculture or similar activities such as horticulture where the person can show a need to reside in a rural area in the immediate vicinity of employment. In such cases: "The planning authority will support proposals for individual dwellings on suitable sites in rural areas relating to natural resources related employment."
26. Consideration of housing developments in all types of rural area must take into account "Development Assessment Criteria" and examination of "Ribbon Development" issues set out in paras. 10.5.1 and 10.5.2 of the development plan. These include "local circumstances such as the degree to which the surrounding area has been developed and is trending towards becoming overdeveloped; The degree of development in the original landholding from which the site is taken, including the extent to which previously permitted rural housing has been retained in family occupancy...;the suitability of the site in terms access, wastewater disposal and house location relative to other policies and objectives of the plan and the degree to which the proposal might be considered infill development."
27. "Graigs" are rural settlement clusters. These settlement clusters are identified and listed in Appendix 16 of the development plan. Para.10.6 of the development plan, which refers to Graigs states that: "It is recognised that there may be some scope to facilitate the development of housing within Graigs where the applicant can demonstrate a local housing need in accordance with the policies and Development Assessment criteria set down for the relevant rural area type above and the policies set down below." Rural Development Objective 1 (RD OBJ 1) is: "to support Graigs located across the county in offering attractive housing options to meet the needs of the established rural communities and to support existing local community facilities such as schools, post offices, etc."
28. This must be read in conjunction with Rural Development Policy 8 (RD POL 8). The relevant portion of this reads as follows: " To ensure that the provision of housing in all Graigs shall be reserved for persons who are an intrinsic part of the rural community and comply with the local housing need criteria and policies set down within the relevant rural area type in this Chapter."
29. Rural Development Strategic Objective 5 (RUR DEV SO 5) in Chapter 10 of the development plan is: "To support the vitality and future of Graigs for rural development and ensure a functional relationship between housing in Graigs and in the rural area in which they are located." Core Strategy Objective 10 (CS OBJ 10) in Chapter 10 is: "To

support rural communities through the identification of lower order centres including small towns, villages and graigs to provide more sustainable development centres in the rural areas.”

30. The nearest “Graig” to Louise Murtagh’s site is Bohermeen village which is 2 km away.
31. The planning Map 10.1 annexed to the development plan identifies three types of Rural area within the County.
32. Area 1 comprises “Rural Areas under Strong Urban Influence.” The key planning challenge is identified as: “To facilitate the housing requirements of the rural community while directing urban generated housing development to areas zoned for new housing in towns and villages in the area of the development plan.”
33. A variety of areas are included in “Rural Areas under Strong Urban influence”. Firstly, there are areas in proximity to Dublin. Secondly there are “peri-urban areas” of the county which have been subjected to high levels of urban generated adjustment. Thirdly, areas were included which were experiencing the most development pressure for one-off rural housing. “These areas act as attractive residential locations for inflow of migrants into the county.”
34. Associated Rural Development Policy 1 (RD POL 1) is: “To ensure that individual developments in rural areas satisfy the housing requirements of persons who are an intrinsic part of the local community in which they are proposed, subject to compliance with planning criteria.” Associated Rural Development Policy 2 (RD POL 2) is “To facilitate the housing requirements of the rural community as identified while directing urban generated housing to areas zoned for new housing development in towns and villages in the area of the development plan.”
35. Area 2 comprises “Strong Rural Areas.” The key planning challenge is identified as: “To maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in the wider rural area.” This area is described as “Under more moderate pressure for one off housing development than areas under strong urban influence.”
36. Associated Rural Development Policy 4 (RD POL 4) is “To consolidate and sustain the stability of the rural population and to strive to achieve a balance between development activity in urban areas and villages and the wider rural area.” Associated Rural Development policy 5 (RD POL 5) is: “To facilitate the housing requirements of the rural community as identified while directing urban generated housing to areas zoned for new housing development in towns and villages in the area of the development plan.”
37. The NPF was issued in 2018, following legislation which amended the 2000 Act. In summary, these statutory provisions require that future development plans are prepared in conformity with the NPF. These provisions also require that planning authorities and the Board have regard to the contents of the NPF in performing their

functions. They do not provide that if there is a conflict between policy of the NPF and content of an existing development plan, the former must take precedence over the latter.

38. Section 34(2)(a) of the 2000 Act, as amended, states that when making a decision on an application for planning permission under that section "the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to- (i) the provisions of the development plan, (ia) any guidelines issued by the Minister under section 28, ...(iv) where relevant the policy of the Government, the Minister or any other Minister of Government...and (vi) any other relevant provision or requirement of this Act, and any regulations made thereunder."
39. By s.37(1)(b) of the 2000 Act: "...where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance...and *subsections* (1), (2), (3) and (4) of *section 34* shall apply, subject to any necessary modifications, in relation to the determination of an application by the Board on appeal under this subsection as they apply in relation to the determination under that section of an application by a planning authority."
40. Chapter 11A of Part 2 of the 2000 Act defines the NPF and sets out matters which that document must address. By s.20B(a) of the 2000 Act, the objectives of the NPF include the establishment of "...a broad national plan for the Government in relation to the strategic planning and sustainable development of urban and rural areas, ..." By s.20C(1) of the 2000 Act, any document which comprises the NPF "...shall address the matters set out in *subsection (2)*." These include, at s.20C(2)(e), "the promotion of sustainable settlement and transportation strategies in urban and rural areas..."
41. Section 28(1) of the 2000 Act permits the Minister to "...issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions." By s.28(1A) "...a planning authority in having regard to the guidelines issued by the Minister..., shall- (a) consider the policies and objectives of the Minister contained in the guidelines when preparing and making the draft development plan and the development plan, and (b) append a statement to the draft development plan and to the development plan which shall include the information referred to in subsection (1B)."
42. Section 28(1B) of the 2000 Act requires a planning authority to set out how it has implemented the policies when considering their application to the area of the draft development plan or the development plan. If the draft development plan or development plan does not implement policies and objectives of the Minister contained in the guidelines because the planning authority has formed the opinion that because of the nature and characteristics of a relevant area, reasons must be given in the appended statement for forming the opinion and it must explain why the policies and objectives of the Minister have not been implemented.

43. Section 28(1C) of the 2000 Act specifies that: "Without prejudice to the generality of subsection (1), guidelines under that subsection may contain specific planning policy requirements with which planning authorities, regional assemblies and the Board shall, in the performance of their functions, comply."
44. By s.29(1) of the 2000 Act, "The Minister may, from time to time, issue policy directives to planning authorities regarding any of their functions under this Act and planning authorities shall comply with any such directives in the performance of their functions."
45. By s.143(1)(c) of the 2000 Act: "The Board shall, in performing its functions, have regard to- ...the National Planning Framework and any regional and spatial economic strategy for the time being in force."
46. These provisions, taken together, oblige planning authorities and the Board to have regard to a number of matters in exercising powers under ss.34 and 37 of the 2000 Act. The principal source of planning guidance is the development plan for the area. Since 2010 the terms of a development plan must have regard to policies and objectives in guidelines issued by the Minister under s.28(1) of the 2000 Act and must have appended to it a statement giving information demonstrating how the planning authority has implemented these policies and objectives.
47. Specific planning policy requirements in ministerial guidelines will over-ride contrary provisions in a development plan. Otherwise, the development plan has primacy. The development plan for County Meath was formulated by reference to the guidelines issued by the Minister in 2005. These guidelines did not contain specific planning policy requirements as planning legislation at the time of their formulation did not give the Minister power to over-ride a development plan in this way. The primacy of a development plan extends to cases where there is conflict between its provisions and a policy of the NPF.
48. However, the scheme of the legislation is such that where a development plan has been prepared in accordance with ministerial guidelines and the NPF, conflict between the provisions of the plan and the Guidelines or the NPF is unlikely to arise. Where provisions of a development plan do not conflict with ministerial guidelines or NPF provisions in force at the time when that plan was adopted, such ministerial guidelines and NPF provisions will be relevant to interpretation of its provisions.
49. The development plan was adopted prior to the issue of the NPF. It follows that in cases of conflict between provisions of the development plan and the NPF, the former will prevail.
50. Policy relevant to one-off rural housing in the in the NPF is set out in National Policy Objective (NPO) 15 at page 71 and NPO 19 at page 74.

51. NPO 15 reads as follows: "Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influences to avoid over-development, while sustaining vibrant local communities."

52. NPO 19 reads as follows: "Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements."

53. For the purpose of this guidance a large town has a population of more than 10,000 in which 2,000 are employed. An appendix states that the population of Navan is 30,173 with 12,190 workers, of which 8,970 reside in the town.

54. The context of these policy objectives is set out in accompanying text:

"It is recognised that there is a continuing need for housing provision for people to live and work in Ireland's countryside. Careful planning is required to manage demand in our most accessible countryside around cities and towns, focusing on the elements required to support the sustainable growth of rural economies and rural communities.

It is important to differentiate, on the one hand between rural areas located within the commuter catchment of the five cities and our largest towns and centres of employment and, on the other hand, rural areas located outside these catchments.

It will continue to be necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns, and centres of employment. This will also be subject to siting and design considerations.

A more flexible approach, primarily based on siting and design, will be applied to rural housing in areas that are not subject to urban development pressure. This will assist sustaining more fragile rural communities and in overall terms will need to be related to the viability of smaller towns and rural settlements.

This arises because in some locations, almost all recent single housing in the countryside has been developed privately, with social housing provided largely in settlements. In many parts of rural Ireland, where a significant majority of housing output is in the countryside, this has contributed to spatial and social imbalance and the decline in population of smaller settlements. As a result, many key services have closed, in part due to population decline, leaving more marginalised and vulnerable citizens without access to those services.

At a local level, the core strategy of county development plans will account for the demand for single housing in the countryside. This will relate to the local authority's overall Housing Need Demand Assessment (HNDA) that will be required to be undertaken in future planning. Quantifying the need for single housing on an evidence basis will assist in supporting the preparation of a comprehensive housing strategy and associated land use policies."

55. The provisions of the development plan and the Guidelines and the NPF leave a decision-maker with considerable discretion in deciding on whether or not to grant permission for a one-off house in a rural area of County Meath. The core statutory requirement is that the decision-maker confines consideration to "the proper planning and sustainable development of the area. Individual policies in the development plan need not be followed if they are not mandatory. The decision-maker must "have regard" to other matters. The same goes for policies contained in the Guidelines and the NPF. It is sufficient that the decision-maker have regard to relevant policies in such cases. Where policies are being applied, the decision-maker must apply them correctly.
56. The planning inspector examined a number of issues under the heading of "Compliance with Rural Housing Policy in paras. 7.2 to 7.15 of her report.
57. She accepted that the site of the proposed development was within "Area Type 2" in the development plan: "Strong Rural Area" and she paraphrased Rural Development Policy 5.
58. She then discussed the applicant's submission that the planning authority had erred in its reasoning that planning permission should be refused on the basis of failure by Louise Murtagh to demonstrate social or economic need by reference to the first bullet point in NPO 19 of the National Planning Framework. The decision maker stated as follows:

“Whilst I acknowledge the applicant’s frustrations in this regard, the National Planning Framework is the overriding higher tier policy document for development nationally, the Council are therefore obliged to demonstrate compliance with the NPF and are at liberty to refer to the policy requirements within it for the purpose of assessment of the development.

I note that the NPF recognises that there is a continuing need for housing provision for people to live and work in Ireland’s countryside. The document states that a more flexible approach, based primarily on siting and design, will be applied to rural housing in areas which are “not subject to urban development pressure,” this caveat is of particular relevance to the appeal before the Board, given the location of the appeal site within a strong rural area as outlined above. This policy position is intended to assist in sustaining more fragile rural communities. One-off housing will, however, be required to be considered within the context of the viability of smaller towns and rural settlements.

The area in the vicinity of the site is semi-rural in nature and characterised by a number of one-off rural dwellings, agricultural buildings and open agricultural land. The planning history, summarised in Section 4 of this report, demonstrates that the appeal site and larger landholding which the appeal site forms part of has experienced significant development pressure.

I note that Planning permission has previously been refused for development of a dwelling on the site as outlined in Section 4 above. A section 47 Sterilisation Agreement was a condition of two previous permissions in relation to dwellings to the north of the site....which relate to the original landholding and are the subject of this appeal.

The existing level of development and planning history demonstrate that the area is under strong development pressure, which is not uncommon in such fringe areas of lands identified as being under Strong urban Influence. As such I consider that a flexible approach as referenced within the NPF is not applicable to the assessment of this development.”

59. The inspector’s report then referenced that Louise Murtagh comes within the above quoted provision of para. 10.4 of the development plan. She was native to living in the area with family ties and was employed in the locality. She did not own her own property. The inspector then referred to a conclusion of the planning authority in refusing permission that Louise Murtagh “in failing to demonstrate an economic or social need to live in the rural area has also not demonstrated that their housing need could not be satisfactorily met in nearby settlements”.

60. The inspector did not engage with the issue of whether it was or was not correct to say that Louise Murtagh had not demonstrated an "economic or social need to live in the rural area." This formulation was taken from NPO 19 in the NPF. It does not feature in the paragraph of the development plan dealing with "Persons who are an Intrinsic Part of the Rural Community." The inspector noted Louise Murtagh's contention that her proposal was not urban generated housing demand and would not contravene the policies of the development plan.
61. The inspector then noted "...that the policies and objectives of the Meath County Development Plan seek to provide more sustainable formats of developments within the rural areas through supporting the vitality of the Graigs and existing local community facilities offering attractive options to meet the needs of the established rural communities. She referred to the policies and objectives in the development plan quoted by the Board in para. 2 of its decision. She described the location of the proposed development as 2km from Bohermeen and not within any town, village or graig. She concluded that the proposed development "would undermine the viability of the graigs and notion (of) compact development." She considered that the proposed development would require use of a private car and would not be environmentally friendly for that reason. She considered that the development would militate against preservation of the rural environment and the preservation of private services and infrastructure.
62. She concluded that by reason of all of these matters discussed in paras. 7.2 to 7.14 of her report "the proposal would be contrary to the proper planning and sustainable development of the area. The proposal would therefore be contrary to the policy provisions of both the Meath County Development Plan 2013-2017 and the National Planning Framework in this regard.
63. The Inspector then dealt with "Density of Development" in para 7.15 of her report. This was relied on by the planning authority as a ground of refusal. She summarised the contention of the planning authority that that the development would give rise to an excessive density of development in the rural area lacking certain public services and community facilities and by doing so would set an undesirable precedent for similar development in the area. She stated that "It is important to note that the contentions for this reason for refusal pertain to the impact of the development on the vitality and viability of adjacent lower order settlements and community facilities. The issue of such impacts has been addressed in the foregoing paragraphs and will not be repeated hereunder."
64. Finally, the inspector considered the refusal by the planning authority of permission on grounds that there was a contravention of Condition 3 attached to permissions KA/40669 and KA/40653. Both of these permissions stated that "Prior to the commencement of any development the owner of the landholdings of which the land forms part as shown outlined in blue on the location map submitted on 23/12/05 shall have entered into a legal agreement with the planning authority under Section 47 of the Local Government (Planning and Development) Act 2000 providing for the sterilisation

from any housing or non-agricultural development on the entire holding.” The inspector stated that this issue was raised in the context of a previous appeal by Louise Murtagh relating to her application to develop on her site (ABP 309650). She noted a recommendation in the Guidelines that inflexibility of s.47 agreements “limits their usefulness except in highly exceptional circumstances, ” and that these circumstances were deemed to relate to the landholding by the planning authority and the Board.

65. She pointed out that the developments permitted by permissions under P.A Ref KA/40669 and P.A. Ref KA/40653 were implemented. “There is no evidence on file to suggest that any steps were taken to remove these conditions. While I have considered the subject application on its individual merits, these conditions are a material consideration. While no details of such legal agreements have been provided by the applicant, I consider that further development of the landholding would be contrary to the intent of the conditions.” The inspector then concluded by recommending that the third reason advanced by the planning authority relating to contravention of the 2005 planning permissions be upheld.
66. At the end of her report the inspector provided the reasons and considerations for her recommendation that planning permission for Louise Murtagh’s proposed house be refused. She did not refer to the NPF. She stated that the proposed development was in an “Area Under strong Urban Influence as set out in the Guidelines and in a “Strong Rural Area” as identified in the development plan. Louise Murtagh’s eligibility as a rural applicant for permission was not addressed. The remainder of the inspector’s conclusions did not depend on identification of Louise Murtagh’s status as a rural resident as set out in the development plan. They related to planning matters such as encroachment of random development in a rural area lacking facilities and services, excessive density of development in a rural area and inconsistency of the proposal with other policies and objectives of the development plan.
67. Finally, she concluded that the proposed development “contravenes materially conditions attached” to the 2005 permissions. “The requirements of such conditions are considered reasonable having regard to the existing level of development in the area.”
68. The Board’s statement of reasons for refusal of permission took a firmer stance. Entitlement of Louise Murtagh to have her eligibility to apply for planning permission in a rural area in accordance with the development plan was not accepted. Policies in the Guidelines which the development plan implemented were used to re-categorise the status of the area where she lived and policies in the NPF were then applied.
69. The scheme of the 2000 Act, as amended is clear. A development plan is the core document setting out planning policy in the functional area of any planning authority. Policies in the Guidelines and the NPF cannot be deployed to contradict policies in a development plan which implemented the Guidelines or predated the NPF. This conclusion is supported by the content of para. 35 the judgment of Baker J. in *Brophy v. An Bord Pleanála* [2015] IEHC 133 and of preliminary observations of Humphries J

in *Cork County Council v. Minister for Housing local Government and Heritage* [2021] IEHC 683.

70. The Board did not merely “have regard” to the Guidelines and the NPF. It supplanted criteria for assessment of Louise Murtagh’s rural housing needs which are set out in the development plan by other criteria extracted from the Guidelines and the NPF which were less favourable to her application.
71. The final issue which this Court considered is whether the matters identified as legal errors in the reasoning of the Board must result in the annulment of the decision. Not all errors in administrative decision-making will have this effect. A decision may be made for a number of reasons. Some of these reasons may be capable of determining the result of the process on a stand-alone basis. A reason for a decision may be dispositive.
72. This Court invited submissions on this issue. Judgments of Kearns and Fennelly JJ in the Supreme Court in *Talbot v. An Bord Pleanála* [2009] 1 I.R. 375 and the judgment of Haughton J. in *O’Flynn Capital Partners v. Dún Laoghaire Rathdown County Council* [2016] IEHC 480 were cited.
73. The first of these authorities involved an application for leave to apply for judicial review. The majority of the Supreme Court declined to express a view on whether a planning decision by the Board was capable of surviving where only some of the reasons were found to be invalid. The second of these authorities was decided on the basis that irrelevant considerations which the respondent planning authority took into consideration affected the overall decision.
74. Whether decisions are wholly invalid or partially invalid depends on how they are framed. In principle, it is no longer correct that certiorari can only go to quash the whole of an order or decision: see *R v. Secretary of State for Transport Ex p. Greater London Council* [1986] QB 556. There is no golden rule to such effect. For example, a condition in a planning permission may be found to be invalid. The whole permission will not fall if it is clear from the terms and context of the decision that the permission would have been granted without that condition. Annulment of a decision which contains defects may not always be appropriate; see para. 53 of the judgment of Hogan J. on behalf of the Supreme Court in *Pembroke Road Association v. An Bord Pleanála and Others* [2022] IESC 30,
75. A decision may be allowed to stand where legal errors by the decision-maker do not affect the result. This approach to the remedy of judicial review requires proper exercise of discretion. The 5th Edition of Lewis on “Judicial Remedies in Public Law” contains the following useful analysis of the approach of English courts to some aspects of this issue at para 5-036 (p. 201):

“The courts have accepted that in appropriate circumstances they will give effect to the *intra vires* parts of an act and deny validity only to those parts that are *ultra vires*. The courts may quash the invalid part

only and or may grant a declaration that the measure is not to take effect in so far as it is invalid. The difficulty comes in identifying the test and predicting the circumstances in which the courts will sever the ultra vires part of a measure or treat a measure as partially invalid. This difficulty arises in part from the wide variety of circumstances in which the question of partial invalidity arises, but it also reflects differences of opinion on the proper role of the courts in this area. On the one hand there is a desire to give effect to legal acts in so far as possible rather than striking down the whole acts, much of the content of which is unobjectionable. In the words of Ormerod LJ the courts "should not strive officiously to kill to any greater extent than it is compelled to do so". On the other hand, there is a need to ensure that the courts do not usurp the functions of the decision-maker by quashing part of an act and leaving something in force which is different in character from the original act and which the courts cannot be sure would have been made by the decision-maker. As with so much in public law there is a balance to be struck. The third option open to the courts would be to reject any possibility of severance and always to strike down the whole act where any part of that act is shown to be ultra vires. This course has "the merit of simplicity and of encouraging the [decision maker] to keep within his powers. The disadvantage of such course is that much to which no objection can be taken is then unenforceable". The courts have decisively rejected this option."

76. There are some circumstances where this excision of the bad from the good is not possible. A court cannot rewrite a decision of an administrative body. The reasoning leading to a decision may involve cumulative reasoning which makes it impossible to sort out the bad from the good. In some cases, the decision maker may have a plurality of purposes, some bad and some good. An example of a decision which involved a plurality of purposes can be found in the judgment of Fennelly J. on behalf of the Supreme Court in *Kennedy v. Law Society of Ireland (No.3)* [2002] 2 I.R. 458 at pp. 486 to 489. Another example of a circumstance where excision of the bad from the good was not possible in the context of bye-laws is *DPP v. Hutchinson* [1990] 2 A.C. 783.
77. However, where some of the reasons for a decision are invalid and a decisive stand-alone valid reason given by the decision-maker produces the same result, then that result does not depend on any invalid reasoning. The valid reason for the decision remains valid and disposes of the matter. In considering this appeal the Board came to its own conclusions on why permission for the proposed development should be refused. Inevitably, this consideration also involved taking a view on whether the approach taken by the planning authority to other issues was correct.

78. Para. 2 of the Board's decision was a stand-alone conclusion which did not depend on evaluation of any special status enjoyed by Louise Murtagh as an established resident of a "Strong Rural Area", or the status of the planning conditions imposed in the 2005 permissions. It was not part of a cumulative process of reasoning which led to a refusal of permission. It refused permission for the proposed development for other reasons which were dispositive.
79. The Board stated that the proposed development would be contrary to the proper planning and sustainable development of the area by reference to planning considerations identified in that paragraph. That remains the position, irrespective of invalidity of reasoning which underpins the conclusions at paras. 1 and 3. The Board arrived at separate conclusions on separate issues for separate reasons.
80. For these reasons this Court will not set aside the order of the Board.