AN CHÚIRT UACHTARACH

THE SUPREME COURT

S: AP:IE: 2023/0011

[2023] IESC 39

O'Donnell C.J.
Charleton J.
O'Malley J.
Woulfe J.
Baker J.
Hogan J.
Donnelly J.

IN THE MATTER OF AN APPLICATION PURUSANT TO SECTIONS 50, 50A, AND 50B OF THE PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

Between/

KILLEGLAND ESTATES LTD.

Applicants/ Appellants

AND

MEATH COUNTY COUNCIL

Respondents

AND

CORNELIUS GILTINANE AND PATRICIA GILTINANE

Notice Parties

JUDGMENT of Mr. Justice Gerard Hogan delivered the 21st day of December 2023

Part I - Introduction

Background

1. Where the elected members of a local authority propose to de-zone land already zoned for residential development by the making of a new development plan what is the extent to which they are obliged to give reasons for their decision? And if the elected councilors decide to de-zone a (relatively) small infill site in an urban area would that in itself represent an unlawful breach of a key objective of the National Planning Framework? These are in essence the principal questions presented on this appeal. These issues arise in the following way.

2. In September 2021 Meath County Council ("the Council") adopted a new development plan, the Meath County Development Plan 2021-2027 ("the 2021 Development Plan"), by means of a resolution of the elected members. The effect of this decision was to change the land-use zoning of certain lands owned by the appellant company at Killegland, Ashbourne, County Meath (by downzoning those lands from residential to community infrastructure) while at the same time rezoning certain nearby lands owned by the notice parties from rural to residential. The appellant ("Killegland") now challenges the validity of this decision on several grounds. The claim now made in this appeal is, in essence, that inadequate reasons have been given by the Council in respect of this decision having regard in particular to the fact that this de-zoning of the lands has had adverse consequences for Killegland.

3. The Killegland lands comprise a 0.84 ha site at Ashbourne and were purchased by Killegland in May 2021 at a price which appears to reflect the pre-existing residential

zoning. These lands were previously zoned A2 New Residential under the earlier Meath County Development Plan 2013-2019. This site is now zoned G1 Community Infrastructure under the new 2021 Development Plan. The lands owned by the notice parties (the 'Giltinane lands') comprise a 2.8 ha. site adjacent to the M2 motorway. The Giltinane lands were previously zoned RA Rural Area. This site had been zoned A2 New Residential under the 2021 Development Plan, but this decision was in turn subsequently reversed by a specific ministerial decision made pursuant to s. 31 of the Planning and Development Act 2000 ("the 2000 Act"), so that the lands in question reverted as a consequence to their original RA zoning.

4. I pause here to note that I propose presently to explain the linkage between the Killegland lands and the Giltinane lands so far as the present appeal is concerned. For the moment it is sufficient to state that the notice parties have taken no part in these proceedings or in respect of this appeal.

5. On the 18th December 2019, a draft Development Plan for the 2020-2026 period was put on public display by the Council. So far as the Killegland lands were concerned, the plan proposed to retain the pre-existing zoning in respect of these lands. The name of the draft plan was later changed to the Draft Meath County Development Plan 2021-2027 due to delays caused by the Covid-19 pandemic. During the period of display, many submissions concerning the draft Development Plan were received by the Council, including a submission from the Office of the Planning Regulator ("OPR"). The OPR submission stressed the need for what was described as a "tiered" approach to zoning in line with the national policy objectives contained in the National Planning Framework ("NPF"). A large number of submissions were also received from elected members and the public, including from one of the Ashbourne local councillors, Cllr. Alan Tobin.

6. In August 2020, the Chief Executive of the Council prepared a response to the various submissions received (including those from Killegland and the OPR) and concluded that no further change to the proposed zoning was recommended. In September 2020, a Notice of Motion ('NOM') 112 was brought by certain elected members of the Council which proposed changing the zoning of Killegland's lands from A2 New Residential to F1 Open Greenspace. This motion was amended so that the new zoning of the Killegland lands would be G1 Community Infrastructure. The councillors sponsoring the motion explained that the "dezoning of this small 3 acre [.08 ha.] site [is] critical to the development of a park in the area." So far as the Giltinane lands were concerned, the councillors explained that:

> "The residential zoning we would like moved to a site to the west of Churchfields that was part of the original land holding for that development. As per recommendations, we are told that we cannot zone additional land, but we can move residential lands to different locations."

7. This motion, alongside a separate motion NOM 114 (which sought instead to rezone the Giltinane lands to A2 New Residential) was duly passed by the elected members. In October 2020, the Chief Executive published a second report recommending no change in the zoning of the aforementioned lands. As she explained:

> "The subject site is an infill site which would support the consolidation of development within the built-up area of Ashbourne. This is in accordance with national policy as set out in the [National Planning Framework] whereby National Policy Objective 3c requires 30% at least of all new homes to be delivered within the existing built-up footprint of settlements."

8. To put all of this in context, it may be observed that the 2021-2027 Meath Development Plan describes Ashbourne as the second largest town in Meath with a population of some

13,000 people (as per the 2016 Census) which is situated some 20km from Dublin. The town itself is bounded by the M2 motorway. The Killegland lands themselves lie between the centre of the town and the motorway. To the north lies the Broad Meadow River and there are two nearby residential developments, "Churchfields" and "Bourne View". While Killegland argued that its lands constituted a classic in-fill site suitable for further residential development which would complement the existing developments, it also maintained that there were alternative options which would not necessitate the dezoning of the lands. A core theme of Killegland's complaint was that it had been singled out unfairly for such dezoning and that this had taken place against the advice of the Council officials and the Office of the Planning Regulator.

9. It nevertheless seems clear the elected members wished to preserve these lands as being suitable as part of the development of a park along the river thereby facilitating an access road from Churchfields and the construction of a car park to service the proposed park. To that end one may infer from the debates which took place on these various zoning motions that the elected members sought to have the Killegland lands preserved for community use as a part of a proposed park close to the river bank, while at the same time suggesting that the Giltinane lands (which were to the rear of Churchfields and Bourne View and which abutted the M2 motorway and were accordingly further from the town centre) should be zoned for residential use. The Chief Executive said in response that the proposed park did not have to be on the specific site identified by the councillors and that the lands in question were not, in any event, the only point of access to any such proposed park.

10. At all events, at a special planning meeting held on 21st January 2021, the forty elected members of the Council voted in favour of proposed Material Alteration 08 ('MA08'), changing the zoning in a manner according to the proposed motion. All of these meetings were, of course, open to the public, even if owing to the exigencies of the Covid-19

pandemic, much of the participation was done remotely and virtually rather than in person. As Humphreys J. noted in his judgment (at paragraph 106), MA08 was "nothing more or less than a compilation of the amendments" which the councilors had previously passed" and it was so treated by the Chief Executive and the elected officials. It is clear from the reasons advanced by Councilor Tobin (the sponsor of the motion) that it was intended, so to speak, to swap the zoning of the Killegland and Giltinane sites, so that the residential zoning would move from the former to the latter.

11. There is a transcript of the meeting which records the various views expressed. Councillor Tobin explained the reasons for the proposed motion:

> "…. effectively the reason for community infrastructure is that we envisage in the [Killegland] site...which is the entrance to the park, we'd like to be able to plan for the likes of an outdoor and indoor education centre, maybe a coffee shop, but an area for people to park in the future. We're going to be charging our cars. There'll be charge points there to charge your cars. There'll be areas for bike racks and things like that. But it'll also be a space for some outdoor activities…."

12. Councillor Tobin then continued:

> "The other thing that I just want to point out as well is, the community infrastructure to the right of that particular space is a school called St. Declan's School, and you've got the school's campus to the north…it is the linkage up through this and because we're moving the residential land away from it, it is an opportunity to have that natural entrance into it…and you'll see the linkages to the other green spaces there to the north, to the west and the east…."

13. He concluded by noting that the Killegland lands had retained this zoning since 2001 and yet no attempt had been made to develop it. By contrast, the Giltinane lands were – he

maintained – ready for development if they were re-zoned. The key point, however, was that the de-zoning of the Killegland lands facilitated the entrance to the public park and the general development of the park. Other councilors spoke to the same general effect.

14. The effect of this motion was that Killegland lands were to be de-zoned from A2 New Residential to G1 Community Infrastructure and the Giltinane lands adjacent to the M2 motorway were re-zoned from RA (Rural Area) to A2 New Residential. MA08 was put on public display between 31st May 2021 to 29th June 2021. The new development plan, including MA08, was formally adopted by the Council on 22nd September 2021 following a formal vote of the elected members two days earlier on 20th September 2021.

15. Some three hundred submissions were made in respect of MA08. Most appear to have been supportive. The general thrust of these submissions was that the Killegland lands represented a perfect access point to the proposed public park, albeit a few submissions also highlighted the need for new housing on this particular site. Councillor Tobin explained his thinking in his submission (MH-C5-834):

> "**Dezoning and Zoning Killegland Ashbourne**
>
> Proposal to dezone an area of 3 acres adjacent to Killegland graveyard and create a designated open space between Garden City (Bourne View) and Churchfields. There are a number of reasons for this. The green area is used by walkers, dog owners and young children in the area. A number of months ago a large number of concerned residents met to see if a group could be set up to try and get the area rezoned for open green space. The area is not suitable for housing as...the only access to the site is through a cul de sac in Churchfields. Open greenspace would be benefit to all as access to the area wouldn't be restricted if appropriate agreements could be made with the current owners."

16. As one might have expected, the applicant's consultants, Thornton O'Connor, had recommended that the existing zoning be maintained. This recommendation was contained in a highly detailed submission dated 29th June 2021. One of the planning objectives of the NPF is that development in built-up areas be consolidated and they pointed to the fact that the Killegland lands were proximate to the centre of Ashbourne and represented an in-fill site.

17. The OPR had also recommended that the existing zoning for both the Killegland lands and Giltinane lands should be retained, saying:

> "The submission outline that the proposed zoning is inconsistent with the RSES for the Eastern and Midland Regional Assembly Area…as well as being inconsistent with the NPF. Both of these objectives seek to promote compact growth and the subject site [Giltinane lands] is noted as being located adjacent to the M2 motorway. It is also noted that the [Killegland] site zoned A2 in the Draft Plan which is subject to this amendment is sequentially preferable. Consequently, it is recommended that the proposed amendment is not adopted."

18. The Chief Executive of Meath County Council also opposed the proposed motion, essentially for the reasons advanced by the OPR. The Chief Executive had previously recommended against the proposed alteration in her report of October 2020:

> "The subject site is an infill site which would support the consolidation of development within the built-up area of Ashbourne. This is in accordance with the national policy objective set out in the NPF whereby National Policy Objective 3c requires at least 30% of all new homes to be delivered with the existing built-up footprint of settlements."

19. At the Council meeting held on 21st September 2021 it was made clear to the elected members on behalf of the Cathaoirleach that the vote was actually in respect of the Chief

Executive's response. Following a (virtual) debate on the Council floor the elected members voted by 19 votes to 15 to reject the Chief Executive's recommendation.

20. Incidentally, on 28th May 2021, Killegland submitted a planning application for permission to undertake development on the lands comprising of 31 residential units and associated works. Planning permission was granted by the Council on 22 October 2021, but the permission was of course granted by reference to the (original) residential zoning in the 2013-2019 Development Plan. Various appeals have been lodged against this decision, but the Court has been informed on 21st September 2023 that An Bord Pleanála purported to allow the appeal on the ground that the lands were now zoned G1. As the High Court had previously granted a stay in respect of all proceedings and appeals concerning these lands, the Board has now accepted that it had acted in error. It has moreover indicated that it will consent to an order quashing this decision. I mention all of this for completeness, as nothing turns on this so far as the present appeal is concerned.

21. Taking up the narrative again, on 20th October 2021, the OPR delivered a notice to the Minister for Local Government and Planning recommending that the Minister issue a direction pursuant to s.31 of the 2000 Act regarding the new zoning of the Giltinane lands effected by the adoption of the resolution on the MA08 motion. On 28th January 2022, the Minister issued a direction pursuant to this provision which had the effect of restoring the original RA zoning of the Giltinane lands, but which left unaffected the de-zoning of the Killegland lands.

22. The Development Plan took effect on 3rd November 2021 so that the Killegland lands were thus de-zoned. The present judicial review proceedings were commenced shortly thereafter on 25th November 2021. In those proceedings Killegland seeks essentially to challenge the validity of material alteration MA08 which provided for the de-zoning of its lands. As

presented in the appeal to this Court, the essential objection advanced by Killegland is that inadequate reasons were given by the Council in respect of this decision.

Part II- The judgment of the High Court

The judgment of the High Court

23. In the High Court Humphreys J. rejected this challenge in a judgment delivered on 1st July 2022: see *Killegland Estates Ltd. v. Meath County Council* [2022] IEHC 393. A certificate of leave to appeal to the Court of Appeal was sought pursuant to s. 50A of the 2000 Act.This was refused by the High Court in a joint judgment delivered on the 9th December 2022 in respect of both this case and the accompanying McGarrell Resources case: see [2022] IEHC 683. This Court granted leave to appeal to Killegland pursuant to Article 34.5.4° of the Constitution by a Determination dated 28 March 2023: see [2023] IESCDET 37.

24. The core of Killegland's case in the High Court could be summarised as follows: The alterations to the existing zoning of their lands contained in MA08 was contrary to what is termed the sequential approach to zoning. In that respect the Council failed to have regard to the Development Plan Guidelines 2007, and it acted inconsistently with the tiered approach to zoning, contrary to Objectives 72a, 72b and 72c of the NPF and Appendix 3 to that document. It says that its lands were sequentially preferable for residential development to the alternative Giltinane lands near the M2 motorway which originally carried the zoning objective A2 (New Residential), but which as a result of the ministerial s. 31 direction have now reverted back to their rural zoning ("RA") status.

The Development Plan Guidelines

25. In his judgment Humphreys J. first held that the legal status of the Development Plan Guidelines 2007 is simply that of guidelines under s. 28(1) of the 2000 Act: see paragraphs 51 to 61 of the judgment. The only obligation thereby imposed on the Council was the

requirement was to 'have regard' to those guidelines, correctly understood, with reference to the sequential test, where zoned land, but not un-zoned land, is concerned and this was not "a heavy bar." Unlike ministerial orders providing for specific planning policy requirements ("SPPR") under s. 28(1C) of the 2000 Act, these guidelines were not in any sense binding: see generally *Cork County Council v. Minister for Housing, Local Government and Heritage (No. 1)* [2021] IEHC 683.

26. While the Guidelines favoured in-fill development and cautioned against "leapfrogging to more remote areas", they were not binding. In any event, Humphreys J. found (at paragraph 61) that the Council:

> "…did have regard to those guidelines. The logic of the decision was there was an objective reason for not permitting development on the particular lands in question, mainly the need to facilitate community infrastructure on that particular site. Under those circumstances, departure from the guidelines does not constitute a misunderstanding of them or a failure to have regard to them and therefore does not give rise to any ground for *certiorari.*"

27. Humphreys J. accepted that the obligation to ensure that the Development Plan "was consistent with the national…objectives specified in the NPF as per s. 10(1A), s. 12(11) and s. 12(18) of the 2000 Act was a more onerous obligation that other often-used statutory formulae such as "have regard to" found in s. 28(1). While the NPF frequently spoke of objectives in relation to "zoned land", Humphreys J. concluded (at paragraph 154) that in its context "it clearly means zoning for the purposes of housing or economic activity", so that the infrastructure assessment report envisaged by the NPF "is [only] required if development is to be permitted…The purpose of it is to ensure that any such new development is supported by adequate infrastructure."

The objectives of the NPF

28. A further issue was whether this statutory obligation to ensure that Development Plan was consistent with the objectives of the NPF and the Regional Spatial and Economic Strategy ("RSES") applied only to the specified objectives contained therein or whether it also extended to the entirety of these documents. Humphreys J. concluded (at paragraph 181) that it applied only to the specified objectives:

> "The development plan is not required to comply with every provision of the NPF or RSES, only with objectives (which is a term of art) and only relates to objectives that are expressly identified as such."

29. Humphreys J. furthermore held that in any event s. 10(1A) only required compliance of the Development Plan with the objectives of the NPF and the RSES as far as this was practicable Moreover, Humphreys J. concluded that the objectives of the RSES may be departed from for objective reasons, that there is a margin of appreciation given to the decision-maker, so that compliance with objectives is not absolute or inflexible.

30. Humphreys J. rejected the contention that Killegland's representations were not considered by the Council, stating that failure to discuss something by way of narrative is not to be equated with failure to account for it at all. Humphreys J. accepted the principle that a decision-maker is required to consider the submissions of a participant in the process, but qualified that such does not oblige them to regard everything put forward as relevant or decisive.

31. So far as compliance with the objectives of the NPF is concerned, these were set out (at p. 137 of the NPF) in what Humphreys J. described (at paragraph 140 of the judgment) as "partly aspirational terms. Some provisions, such as Appendix 3, are capable of being operated now, whereas other provisions could not be fully operable without future

guidelines and methodologies that have never been put in place". I propose for convenience presently to set out the relevant provisions of the NPF in the course of my discussion of the substantive issues.

32. Humphreys J. concluded (at paragraphs 143-146) that the Council only had to comply with the objectives of the NPF, not with every specified detail. In any event, the relevant Objectives and Appendix 3 only applied to "zoned land", i.e., land that has been zoned for the purposes of housing or economic activity (at paragraph 154). These lands were not "zoned lands" in this sense. The judge summed up key parts of his conclusion by saying (at paragraph 181):

> "One of the objectives so specified is that planning authorities will be required to apply a standardised, tiered approach to differentiate between: i) zoned land that is serviced; and ii) zoned land that is serviceable within the life of the plan (NPF National Policy Objective 72a). As to serviceable land, a report on the cost of delivery of the services is required (Objective 72b). Land that is not serviceable during the life of the plan should not be zoned for development (Objective 72c)."

33. As these lands were not "zoned lands" (i.e., lands that were zoned for housing or economic activity during the currency of the existing development plan), the tiering approach mandated by Appendix 3 of the NPF had no application: see paragraph 182.

<u>The adequacy of the Council's reasons</u>

34. In assessing the requirement of the Council to give reasons for their decision, Humphreys J. held that the principle regarding the giving of reasons in this context was a requirement to give main reasons for main issues. Such an obligation was not to be unduly prescriptive, and may be gathered if not from express statements, then from documentation expressly referred to or from the context of the decision.

35. Humphreys J. held moreover that beyond this obligation, there was no requirement to engage with submissions in the discursive sense. Humphreys J. considered that the nature of the Council decision, being a result of a collective/deliberative assembly, was a basis for a more flexible approach to the formal imposition of a requirement to set out reasons on the face of a resolution or a document referred to in that resolution. He took the view that an unduly literal interpretation of the principles in *Christian v. Dublin City Council* [2012] IEHC 309, [2012] 2 IR 506 should, where possible, be avoided. Insofar as the yes-or-no voting system of decision-making does not lend itself to such an over-formal imposition. Humphreys J. was satisfied that it is inherent in the nature of a collective or deliberative assembly that the body is bound by the collective majority decision and that what is considered is what materials are before them, not just what is stated at a meeting of that kind. Humphreys J. said (at paragraph 114):

> "The rationale for the downzoning is clearly articulated in documents that are for good measure core parts of the record. The applicant and anybody else interested got the main reasons for the main issues and more. Even bearing in mind that the members were not following the Chief Executive, the reasons are clearly stated and cannot be in doubt. Similarly, the decision-maker is not obliged to respond to submissions on a point-by-point basis if the main reasons for the main issues are apparent."

36. Humphreys J. finally concluded that it was misconceived for Killegland to seek an order that would challenge the housing provisions on any one piece of land without also challenging the core strategy of the Development Plan, that it cannot "cherry-pick" pieces of an overall scheme that must hang together. Humphreys J. held that Killegland, in challenging the rationality of the decision, was attempting in an impermissible fashion to engage in a review of the merits of the decision-maker's decision, no aspect of which was shown to not be open to a reasonable decision-maker.

Part III – The arguments of the parties

37. It may be convenient to summarise at this point the argument of the parties in respect of each of the major issues arising on this appeal.

The arguments of Killegland

38. Killegland contend that the trial judge made a series of errors in relation to the scope and application of their challenge to the Council's resolution. In particular, Killegland submit that the trial judge erred in considering that it would be an 'unacceptable anomaly in law' to require reasons to be set out on the face of a resolution or a document referred to in the resolution and in advocating for a more relaxed source of reasons. Killegland cite the statement made by the trial judge that reasons may be found in minutes of meetings being 'best practice' as evidence that there is at least an implicit acknowledgement that an explanation is warranted where a resolution which disagrees with the recommendation of the Chief Executive is published. Killegland contends that such obligation only arises in such circumstances because of the need for certainty as to the rationale where a decision affects the landowners rights.

39. Moreover, Killegland asserts that it is not sufficient to ascertain such a rationale from the minutes or transcripts of meetings as they are not regularly published or made available. Killegland contend that it is difficult to see how the appropriate factors were considered without the provision of a narrative mention of reasons at any formal stage, and that debates and discussions are not sufficient sources of reasons. Killegland contend that the respondent's submission that they 'well knew' the reasons for the decision is flawed. It contends that while they knew the reasons for the proposals, they did not know the reasons within them for their disagreement with the Chief Executive's recommendation. The resolution, the appellant contends, was a simple yes-or-no vote, which did not have any

cross-reference to reasons. Killegland contend that such an open-ended approach frustrates the obligation of collective decision-making, in particular in circumstances of collective decision-making where individuals may have their own purposes for their voting.

40. Killegland furthermore contend that the Chief Executive's later report on the material alteration was not accounted for by Humphreys J., and that his conclusion that the ministerial decision was unrelated to the Council's decision was erroneous. Killegland claim that the invalid upzoning of the direction was complementary to the decision of the Council to downzone and acted as an irrelevant consideration which tainted the entire decision.

41. Contrary to the conclusions of Humphreys J., the appellant contends that the principles set out in *Balz v. An Bord Pleanála* [2020] 2 ILRM 637 and *Connelly v. An Bord Pleanála* [2018] 2 ILRM 453 are reconcilable. Killegland contend that in holding that there was no obligation to address or engage with the submissions of the landowners save in the sense that a decision-maker must give main reasons for main issues, Humphreys J. erred in interpreting *Balz.* Killegland submit that although the principles in *Balz* do not extend the duty to give reasons beyond *Connelly*, that they are intended to apply in generality and that it was an error to hold that it applied only where submissions are addressed in *limine*.

42. Finally, Killegland contend that the conclusion that their case was futile without having challenged the core strategy was erroneous, without a legal basis and represented an unduly rigid approach to relief in judicial review proceedings. The appellant claims that nothing in s. 10(2A)(v) and (vi) of the 2000 Act, or the objectives in the RSES mandates a requirement to challenge the core strategy.

<u>The Arguments of Meath County Council</u>

43. The Council contend that the appellant has failed to demonstrate any grounds on which the substantive judgment of the High Court judge should be set aside, or any grounds on which the decision of the Council should be quashed.

44. Firstly, the Council submit that there are a number of grounds that the appellant is not at liberty to raise. Namely, the ground that there was a material change of circumstances, or that an infrastructure assessment would have better informed reasons, as those submissions did not arise at first instance or come within the general ambit on which leave was granted. Moreover, the Council contends that the ministerial direction was a subsequent development outside their control and therefore it cannot affect the validity of their decision.

45. In relation to the substantive claims of the appellants, the Council contend that the trial judge engaged in an extensive analysis of the law on the requirement to give reasons, contending that the holding that there is no general requirement to give reasons in a resolution of a decision-maker that the law was correctly considered and that no more 'relaxed' test for reasons was applied.

46. The Council contend that the appellant's submissions in general attempt to erroneously isolate the Council's resolution from its contextual history. The Council contend that there was enough information for the Court to have knowledge to appraise the situation correctly, that the appellant was aware of the Council's reasons, and simply disagreed with them.

47. Furthermore, the Council submits that the appellant's submissions relating to sequencing are predicated on a decision made in relation to the notice parties' lands rather than the appellant's lands and is therefore not their decision to challenge.

48. In relation to *Balz,* the Council contend that this decision has been misinterpreted by the appellant. The Council contends that the trial judge simply held that the case did not extend

a duty to give reasons beyond pre-existing case-law and that any differences of approach elsewhere did not affect that decision.

49. The Council finally contend that absent a challenge to the decision to adopt the Core Strategy, these proceedings can confer no practical benefit to the appellants, who the Council insist were not disadvantaged, prevented or inhibited from making submissions, such that even should all other arguments be rejected, that the appeal be nonetheless quashed on that basis. This latter argument was not, however, pressed on this appeal.

Part IV: Whether Killegland was obliged to challenge the entirety of the Development Plan

50. Perhaps the first point which arises is whether Killegland was also obliged to challenge the core strategy of the entire Development Plan in addition to challenging the particular zoning decisions which affected it. In the High Court, Humphreys J. found against the applicant on this point saying (at para. 182(xii.)) of the principal judgment:

> "In a case where the housing provision for a particular piece of land is dictated in a consistent way by the core strategy as part of a comprehensive hierarchical allocation of provision on any one place of land without also challenging the core strategy."

51. In the subsequent application for leave judgment ([2022] IEHC 683), this issue was again described by Humphreys J. in similar terms. Indeed, the judge considered (at paragraph 9) that it was so central that he did not consider it necessary to consider the application for leave to appeal in any further detail, and simply dismissed each of the grounds of appeal relied upon in a couple of sentences. As Humphreys J. observed (at paragraphs 5, 6 and 7) of the leave judgment:

> "5. The fundamental problem for both applicants is summarised essentially in para. 20 of the *McGarrell Reilly* judgment. In accordance with the National Planning

Framework, the distribution of new housing must be in accordance with a core strategy that forms a coherent whole when looking at all parts of the county. The county hierarchy in turn must be formed in the context of the regional and national housing hierarchy, so that no individual piece of land anywhere can be looked at in isolation, and everything joins up within an overall headline level of housing provision. That headline level has already been accounted for in other, unchallenged, parts of the plan. The fundamental problem for the applicants is that a challenge to the individual zoning of a particular piece of land in isolation from any challenge to the overall hierarchy and distribution of housing provision is a pointless exercise, because no lawful outcome can result in the court creating (or making any order that would facilitate the council in creating) additional housing provision out of thin air for the benefit of the applicants' lands. Any additional housing on their lands would breach the hierarchical and sequential approach set out in the unchallenged core strategy. The applicants in both of these cases have simply not engaged with that point.

6. That lack of engagement has been a feature of the entire process. They did not engage with this difficulty when they made submissions to the council originally at the Draft Development Plan stage, nor did they seek any relief in the proceedings based on any substantial ground as to why the core strategy was defective. One can contrast that with the approach taken by a different landowner, submission reference number MH-C5-627 on behalf of Glenvel GP (Jersey) Ltd, which proposed not just a rezoning of specified lands to A2 housing, but also an amendment to the core strategy as set out at the Chief Executive's report, p. 152. The Glenvel landowners also made the fallback argument that if the overall allocation was not increased then

the council should list their lands for housing in a sequential manner. That submission, in contrast to the approach of these applicants, acknowledges the fundamental dynamic of the process and the need for each individual piece of land to find its place in an overall jigsaw, where the housing allocation is determined hierarchically within an overall envelope.

7. To put it another way, there is no lawful way for the court to make an order whereby a particular piece of land is to be added to the pile for housing, if the applicant has not challenged the size and distribution of the pile overall. The net position is that the total amount of provision for housing in County Meath is determined in the core strategy, and that provision is already spoken for in respect of other lands. There is thus no order that can be made that will be of benefit to the applicants, and the proceedings as constituted are futile in the absence of any pleaded let alone rational basis for challenging the core strategy. Thus the grant of leave to appeal cannot result ultimately in a benefit to the applicants on these pleadings, or affect the order actually made."

52. I find myself arriving at the opposite conclusion. In the circumstances of the present case there was no necessity for Killegland to have challenged the entirety of Development Plan, something which would have affected thousands of landowners throughout the entire County of Meath. This would have been unnecessary, burdensome and likely to lead to both unnecessary costs and the waste of court time. Our entire system of judicial review is premised on the basis that applicants will challenge only those public law decisions which directly affect them. Indeed, Killegland might well not have had standing to challenge the validity of the entire Development Plan. It cannot be said that the Development Plan is a seamless whole, so that it would be perfectly possible for the High Court to quash elements

of that plan if the invalidity of individual zoning decisions affecting the applicant was duly established. If there were ever to be any wider obligation on the part of a landowner to challenge features of a Development Plan other than those that relate to his or her own lands, this could only ever arise where a consequence of a finding of invalidity of the plan would have definite and clear implications for other landowners such that the latter would be entitled to be joined in any judicial review proceedings as being "directly affected" by that decision for the purposes of Ord. 84, r. 22(2) and (6) RSC.

53. One may thus say that, in general, it should only be possible (or even necessary) to challenge the entirety of a development plan if it was adopted following an inherently structurally flawed process or is manifestly based on a legally incorrect view of the constraints imposed by the 2000 Act. To take an extreme example, suppose that a Council simply published a complete development plan without going through the statutory consultation process provided for by the 2000 Act. In those circumstances, any affected person could commence judicial review proceedings in which the Council would be the sole respondent. It would not be necessary to join all the landowners in the relevant county, although presumably any of them might apply to be joined as a notice party.

54. There might, however, be other types of special cases where, for example, the relief sought by an applicant would, if granted, have the effect of unbalancing a development plan to such an extent the extent that it contravenes the constraints imposed by the 2000 Act in that it provided for the zoning of excess residential land. Let us further then suppose that the owner of a large site hopes for residential zoning for development and has, in fact, a strong case that the relevant provisions of the development plan were adopted ultra vires. If the potential effect of a court order quashing even parts of the development plan were to be that the zoning of certain existing landowners was thereby affected, then those landowners would have to be put on notice at an appropriately early

stage in the judicial reviews, even though, of course, the respondent to those proceedings would remain the statutory body responsible for the development plan, namely, the relevant County Council in question.

55. Of course, if this issue were ever to arise in a specific case then it would be for the relevant Council to raise the objection that any fresh zoning which might follow the quashing by court order of part of a development plan could not be accommodated within the strictures of the 2000 Act on the grounds that it would inevitably lead to the excessive zoning of land for residential and other economic purposes. In those unusual circumstances it might even be that many other landowners would then have to be put on notice of the application for judicial review, although none of that requires to be decided in this case. A court would not, in any event, make an order which would have the effect of causing the Council to be in breach of its legal obligations. None of this means, however, that a development plan can only be challenged in judicial review proceedings when the entirety of that plan is challenged by an applicant.

Part V: The adequacy of the reasons

56. The essence of Killegland's case is, as I have already indicated, that no adequate reasons have been given for changing the development plan to its disadvantage, especially when the Chief Executive had consistently recommended against the making of such alterations. In assessing this claim, it is bears remarking that it is clear from the express language of s. 11(8) of the 2000 Act that there can be no expectation as such that a particular zoning of land in a given development plan will remain inviolate. Accordingly, any such zoning is liable potentially to be changed via this democratic process at some future stage when the next development plan is adopted. This was the very point made by Dunne J. in *Mahon v. An Bord Pleanála* [2010] IEHC 495 when she remarked with reference to s. 11(8) that a

change in zoning "does not entitle the applicant to compensation even though the value of his land may have been reduced as a result."

57. Turning then to an examination of the adequacy of the reasons given in the present case, it must accordingly be recalled that the power to make a development plan is an executive function of the elected members: see s. 12(6) of the 2000 Act. When the Council exercises these executive powers, it acts as of necessity as a deliberative assembly. To that extent, it follows that, as Lynch J. said in *Malahide Community Council Ltd. v. Fingal County Council* [1997] 3 IR 383 at 397: "…any court must be very slow to interfere with the democratic decision of the local elected representatives entrusted with making such decisions by the legislature."

58. These sentiments now apply with even greater force following the subsequent adoption of Article 28A.1 of the Constitution in 1999 with its recognition of "the role of local government in providing a forum for the democratic representation of local authorities in exercising and performing at local level powers and functions conferred by law…"

59. Given the deliberative quality of the decision-making process the reasons for a particular decision may not necessarily be as neatly packaged and presented as would be in the case where, for example, reserved functions were discharged by the Council qua planning authority. The duty on the part of the elected members when passing a resolution under their executive powers was nonetheless summarised by Finlay C.J. in *P & F Sharpe Ltd. v. Dublin City and County Manager* [1989] IR 701 at 720-721 as involving "an obligation to ensure that an adequate note was taken, not necessarily verbatim but of sufficient detail to permit a court upon review to ascertain the material on which the decision had been reached."

60. The leading authority on the question of giving reasons in the context of a development plan remains that of Clarke J. in *Christian v. Dublin City Council* [2012] IEHC 163, [2012] 2 IR 506. Here the elected members had decided to alter the zoning of the lands of various education and religious institutions so that the possibility of housing developments on these green field sites was no longer open for consideration. In this respect the elected members departed from the recommendations of the County Manager. The applicants maintained, among other things, that the relevant part of the Development Plan should be quashed since no reasons had been advanced by the elected members for this conclusion.

61. Clarke J. first adverted to the fact that the Oireachtas had elected to give this function to local authorities in accordance with Article 28A of the Constitution. Noting that the 2000 Act imposed a duty in certain places on elected members to give reasons for their decisions it followed that there was no reason in principle why they could not be required to give such reasons.

62. He then explained why in general the elected members were not required to formulate reasons in respect of the policy-making elements of the development plan ([2012] 2 IR 506 at 541):

> "In those circumstances it does not seem to me that the policy end of a development plan being the overall strategy and the principal means designed to implement that strategy are elements of a plan in respect of which there could be any obligation to give reasons save such as might be necessary to demonstrate (if it were not obvious from the plan itself) that the policies underlying the plan were within the statute or were compliant with broader policies which the statute requires to be respected. The broad strategy and its broad means of implementation involve the making of policy choices which are precisely the kind of matters which the current legislation gives to elected

members. In this context it is none of my function to assess whether the conferring of those broad powers on elected members is the best means of implementing an appropriate planning strategy. The Oireachtas, in the exercise of its law-making power under the Constitution, has, for the time being, decided that it is the elected members who are to make those decisions…"

63. The situation was, however, different when the specific aspects of the development plan affected individual rights ([2012] 2 IR 506 at 541):

"However, it seems to me that when a development plan gets down to the nuts and bolts in a way which has the potential to specifically affect the rights of individuals, both those who may wish to develop their own lands or those who may have their own interests interfered with by the development of neighbouring lands, then it seems to me that it is necessary to give at least some reasons for the precise means of implementing the overall strategy or policy adopted. The extent of the reasons required to be given will depend on the nature of the specific provisions of the development plan under consideration."

64. As Clarke J. then explained the issues of reasons become more acute where the elected members depart from the recommendations of the officials with professional expertise in the area of planning and zoning. Clarke J. continued thus ([2012] 2 IR 506 at 541):

"However, the problem seems to me to emerge where the elected members take a different view to that of the senior officials concerned. It is, of course, the absolute entitlement of the elected members to take a different view and to put their own view into effect by proposing whatever amendments to the development plan they may consider appropriate. As pointed out earlier, the normal practice is that when such amendments are proposed the Manager produces a report on the amendments which, at

least in some cases, recommends acceptance of the amendment or perhaps proposes a change in the development plan which, while not in accordance with the precise terms of the amendment, does recognise the issue raised by those elected members who propose the amendment concerned. In such cases, and on the assumption that the Manager either supports the amendment or that the Manager's alternative is adopted, then the Manager's report will itself provide reasons for the changed development plan brought about by the relevant amendment so that the Manager's report, in conjunction with the development plan as a whole, will form a reasoned basis for the plan as amended."

65. Clarke J. continued ([2012] 2 IR 506 at 542):

"The problem as to reasons comes into focus when the elected members are not persuaded by the Manager's position and adopt an amendment with which the Manager does not agree. Where then is one to find the reasons for that amendment? The answer must be that, to the extent that the subject matter of the amendment is one in respect of which reasons are required (*i.e.* that it is not at the policy end of the spectrum) and to the extent that the elected members differ from the Manager so that reasons cannot be found in the Manager's report, then there is an obligation on the elected members to include whatever reasons motivate their decision either directly in the resolution itself or in some documentation or materials referenced in the resolution which can allow an interested party to ascertain the reasons for the amendment. To summarise the position at least at the level of principle, it seems to me that reasons are required for at least elements of the development plan (*i.e.*, those which cannot reasonably be described as being simply policy choices). The reasons may be found in the development plan itself. Where, however, the development plan is the subject of significant amendment and where the rationale for the relevant amendment (consistent with the other provisions of

the development plan) is not to be found in a Manager's report, then there is an obligation on those proposing the amendment to either refer *to the reasons for the amendment in the resolution by which the amendment is effected or in other documentation or materials specifically referenced in the amendment resolution*. Against that general principle, it is next necessary to consider whether reasons were required in this case, and if so, where one must look to find the reasons and whether the reasons given are adequate." (Emphasis supplied)

66. In the present case Humphreys J. took the view (at paragraph 85 of the main judgment) that *Christian* was a case which to some extent turned on its own facts, precisely because no reasons had ever been given for the particular de-zoning decisions which affected the applicants. While he agreed that that it would generally be "best practice" if "Council management when preparing draft minutes of the meeting were to endeavour to record the essence of the rationale for any decisions by elected members for disagreeing with reasoned recommendations of the Chief Executive", he did not think that there could be any *ex ante* rule in this regard.

67. Given, however, that in making a change of this kind to the development plan the councilors are going against the advice of the Chief Executive and the planning officials, the reasons for such a decision should be properly evidenced and justified. Accordingly, the reasons for such a decision should either be clear from the resolution itself or from the documentation before the councilors when the making of the resolution was discussed. In exceptional cases it may be sufficient to show that the reasons for the decision were well understood. As the words which I have taken the liberty of highlighting in *Christian* show, this is in essence what Clarke J. had in mind in that case.

68. This accordingly brings us to the heart of this element of the case. One may thus ask: is there a documentary record which sufficiently explains the rationale for the decision of the elected members? If so, are those reasons consistent with the requirements of the 2000 Act? Were reasons given and, if so, did they adequately explain the rationale for the de-zoning decision?

69. Turning now to the first question: were reasons given and did they adequately the rationale for that decision? To my mind, there can be but one answer. It is clear that the councilors proposing this change had on many occasions explained the reasons for their decision. They wanted to preserve the 0.7ha site as the access point from Churchfield to the proposed park, thereby facilitating an access road and servicing a car park to that proposed park. While it is true that these reasons were expressed in different ways and at different times and that there is no single written expression of that view (as would normally be the case with, for example, planning decisions under the 2000 Act), nevertheless no one could really have been in any doubt as to the reasons given for the de-zoning. Had, for example, Killegland wished to challenge the validity of that decision on substantive grounds – such as vires, rationality or infringements of constitutional rights – the High Court could not have been in any doubt as to the basis of that decision.

70. In this respect the present case is quite different to the situation where the reasons given are contained in a confusing medley of documents or other disparate sources. Thus, for example, in her judgment *in Murphy's Irish Seafood Ltd. v. Minister for Agriculture, Food and the Marine* [2017] IEHC 353 Baker J. quashed the revocation of an aquaculture licence in circumstances where the reasons had not been directly in the manner required by the statutory scheme, saying (at paragraph 72) that it "was not appropriate that reasons are to be gleaned from a series of correspondence over months and where there were concessions by both sides and attempts made to achieve a working arrangements between them."

71. In *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 3 IR 751 Clarke C.J. spoke in the same vein (at 778) when he said that:

> "…a party cannot be expected to trawl through a vast amount of documentation to attempt to discern the reasons for a decision. However, it is not necessary that all of the reasons must be found in the decision itself or in other documents expressly referred to in the decision. The reasons may be found anywhere, provided that it is sufficiently clear to a reasonable observer carrying out a reasonable enquiry that the matters contended actually formed part of the reasoning. If the search required were to be excessive, then the reasons could not be said to be reasonably clear."

72. Here, by contrast, the reasons were contained in the minutes of the meeting and the motion papers filed in support of the resolution. The contention, therefore, so forcefully advanced by Mr. Dodd SC on behalf of the applicant, that it was prejudiced in this regard by the absence of adequate reasons cannot, I suggest, be realistically maintained.

Part VI: Were the reasons given for the decision in accordance with the requirements of the planning laws or was it tainted by irrelevant considerations?

73. This, however, is not in itself dispositive of this appeal. The next question is whether the reasons actually given for the de-zoning were valid planning reasons or whether irrelevant considerations were taken into account. The first question is whether irrelevant considerations were taken into account.

74. There have indeed been cases where, upon examination of the Council minutes, it has become clear that irrelevant considerations have been taken into account by the elected members. Thus, for example, in *Flanagan v. Galway City and County Manager* [1989] IR 66 the elected members had passed a resolution under the provisions of s. 4 of the City and

County Management (Amendment) Act 1955 ("the 1955 Act") requiring the County Manager (i.e., the forerunner of the present Chief Executive) to grant a retention planning permission to the owner of a commercial store. The officials had recommended against the grant of planning permission on the grounds that the development was located on a narrow, sub-standard section of a national secondary route and that it thereby constituted a traffic hazard.

75. Blayney J. noted that unlike the situation in *PJ Sharpe* "where the County Council minutes were decision minutes only and did not contain particulars of what was said at the meeting before the resolution was passed", the evidence in that case disclosed what was said by the county engineer on the one hand by the proposer and seconder of the motion on the other. Here Blayney J. noted ([1989] IR 66 at 71-72) that:

> "both the proposer and seconder urged as reasons for passing the resolution which the members of the County Council, acting in their capacity as planning authority, were not entitled to take into account. They were restricted to consider 'the proper planning and development' of their area. But the proposer ended his speech by saying that, if the application were refused, the applicant would have to emigrate, and the seconder, at the end of his speech, said that the applicant 'employed five people who would otherwise be a burden on the State." How the applicant or his employees would be affected personally by a refusal of the application could not in my opinion be said to have any relevance to the proper planning or development of the area of the County Council. And since these matters were referred to by the proposer and seconder, and advanced as reasons for passing the resolution, they must have been taken into account by the members of the County Council in coming to their decision, which means that they did not restrict themselves to considering the proper planning and development of their area, and for these reasons I consider that the resolution is invalid."

76. A similar view was taken by the same judge in *Griffin v. Galway City and County Manager*, High Court, 31 October 1990. Here the applicant had sought planning permission to construct a house of farmland which he used for horse breeding purposes. Applications of this kind had previously been refused by the Council on the ground that the proposed development would be contrary to the development plan. While a further application was pending a motion was put down by the elected members under s. 4 of the 1955 Act requiring the County Manager to grant the application.

77. At the meeting of the Council the applicant's engineer was permitted to address the councilors to explain why he did not consider that the development would be a traffic hazard, contending that the amount of agricultural traffic would be reduced if the applicant were permitted to live on the site. The County Manager responded by saying that the proposed development would breach the development plan, noting that the lands in question were adjoining national primary roads and were not suitable for this form of traffic.

78. Blayney J. held that the motion was invalid, saying that it was clear from the minutes of the meeting that members of the Council:

> "…did not have regard to an important factor to which they ought to have had regard, namely, that the proposed development would be in breach of the County Development Plan, and, in my opinion, it is also clear that they failed to disregard factors which were irrelevant, namely, personal considerations affecting the applicant. Furthermore, they did not restrict themselves to considering the proper planning and development of their area as required by s. 26 of the 1963 Act."

79. Blayney J. went on to say that the irrelevant personal factors taken into account included the fact that the applicant "found it attractive and almost essential to live on his holding"

and that the "breeding of livestock was of national importance." He added that "these were considerations which were wholly personal to the applicant and were put forward to influence the decision on the resolution and, in my opinion, did influence it."

80. Here Blayney J. noted that none of the speakers who spoke in favour of the motion referred to the development plan issue, even though this had been the key objection of the County Manager. One might add that a similar view had been taken by this Court *in P & F Sharpe Ltd.* where the resolution in question envisaged direct access to a dual carriageway, thereby posing a very significant road hazard. This Court held that such a resolution amounted to a manifest breach of the development plan.

81. A rather similar approach was also taken by McGovern J. in *Farrell v. Limerick County Council* [2009] IEHC 274, [2010] 1 ILR M 99. Here the councilors had gone against the advice of the elected officials and had re-zoned the applicant's lands in the course of making a development plan. The County Manager had received advice from outside consultants to the effect that the proposed re-zoning would be inconsistent with particular heritage and environmental issues. McGovern J. examined the minutes of the meeting before concluding ([2010] 1 ILRM 99 at 107) that there seems to have been "no serious discussion on the environmental impact of the proposed rezoning and the importance of keeping development within existing town boundaries.

82. McGovern J. held that the resolution was invalid "where the elected members have ignored the local authority's expert advice to the effect that the development would be contrary to proper planning and development of the area" and where "they fail to outline any planning-based reason for rejecting that advice": [2010] 1 ILRM 99 at 108. He also concluded ([2010] 1 ILRM 99 at 111) that "the reasons for making the proposed changes by resolution

must be stated in the resolution itself" and that this "the elected members have clearly failed to do."

83. Here one might note that unlike earlier cases such as *Flanagan* or *Griffin* there was no suggestion that the decision to de-zone had been adopted for irrelevant personal reasons. Nor was there any suggestion that unlike those cases or cases such as *Farrell* that the proposed de-zoning would be inconsistent with the proper planning and development of the area or (again as in *Farrell*) that it would jeopardise existing heritage conservation or environmental objectives. Again, unlike the situation in *Farrell,* the reasons given for disregarding the advice of the officials were for the most part planning-based reasons.

84. It is, however, true that an examination of the minutes and the transcript of various meeting discloses that at least some of the councilors believed that these lands were in the ownership of the Roman Catholic Church and that this was the reason why up to that point no application to develop this site had materialised. This, however, was not only a factual error – because in the meantime the lands had been purchased by Killegland – but because as cases such as *Flanagan* and *Griffin* show, questions of the identity of the owner of lands are in general an irrelevant consideration in planning matters. Planning and zoning decisions should, generally speaking, at least, be blind as to issues of ownership. It is also true that the councilors wrongly believed that a "swap" of the Giltinane lands was necessary to facilitate the de-zoning of the Killegland lands. In this the councilors were mistaken, since these latter lands could have been de-zoned on a stand-alone basis.

85. It is true that both of these considerations – the issue as to the ownership of the lands and the necessity to "swap" the lands – were irrelevant to the planning decision which the councilors were required to make. Unlike the situation disclosed by earlier cases such as *Flanagan* and *Griffin,* it may be said that these considerations were not absolutely central

to the de-zoning decision. On the facts of the present case, they were really at best marginal considerations, and they cannot be said to have thereby vitiated the overall decision to de-zone.

Part VII: Was the decision in accordance with the requirements of the NPF and the RSES?

86. Killegland's case under this heading was that the de-zoning was not consistent with the NPF and the RSES. It was said that the de-zoning was inconsistent with National Policy Objective 3c and objective RPO 3.2 of the RSES. All of this was said to amount to a breach of the provisions of s. 10(1A), s. 12(10) and s. 12(18) of the 2000 Act. I propose now to consider each of these arguments in turn.

Relevant legislative provisions

87. Before proceeding further, it is, however, now necessary first to set out both these provisions and the relevant sections of the NPF in some detail. Section 10(1) and (1A) of the 2000 Act provide as follows:

> "(1) A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question.
>
> (1A) The written statement referred to in subsection (1) shall include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under subsection (1) of section 28."

88. Section 10(2A) further provides that:

"(2A) Without prejudice to the generality of subsection (1A) , a core strategy shall —

(a) provide relevant information to show that the development plan and the housing strategy are consistent with the National Planning Framework and the regional spatial and economic strategy and with the specific planning policy requirements specified in guidelines under subsection (1) of section 28,

(b) take account of any policies of the Minister in relation to national and regional population targets,

(c) in respect of the area in the development plan already zoned for residential use or a mixture of residential and other uses, provide details of —

(i) the size of the area in hectares, and

(ii) the proposed number of housing units to be included in the area,

(d) in respect of the area in the development plan proposed to be zoned for residential use or a mixture of residential and other uses, provide details of —

(i) the size of the area in hectares,

(ii) how the zoning proposals accord with national policy that development of land shall take place on a phased basis,

(e) provide relevant information to show that, in setting out objectives regarding retail development contained in the development plan, the planning authority has had regard to any guidelines that relate to retail development issued by the Minister under section 28,

(f) in respect of the area of the development plan of a county council, set out a settlement hierarchy and provide details of —

(i) whether a city or town referred to in the hierarchy is designated as a gateway or hub for the purposes of the National Planning Framework,

(ii) other towns referred to in the hierarchy,

(iii) any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to towns and cities referred to in the hierarchy,

(iv) any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to the areas or classes of areas not included in the hierarchy,

(v) projected population growth of cities and towns in the hierarchy,

(vi) aggregate projected population, other than population referred to in subparagraph (v), in —

(I) villages and smaller towns with a population of under 1,500 persons, and

(II) open countryside outside of villages and towns, (vii) relevant roads that have been classified as national primary or secondary roads under section 10 of the Roads Act 1993 and relevant regional and local roads within the meaning of section 2 of that Act,

(viii) relevant inter-urban and commuter rail routes, and

(ix) where appropriate, rural areas in respect of which planning guidelines relating to sustainable rural housing issued by the Minister under section 28 apply, (g) in respect of the development plan of a city, provide details of —

(i) the city centre concerned,

(ii) (ii) the areas designated for significant development during the period of the development plan, particularly areas for which it is intended to prepare a local

area plan, (iii) the availability of public transport within the catchment of residential or commercial development, and (iv) retail centres in that city,(h) in respect of the area of the development plan of a city and county council set out a settlement hierarchy and provide details of matters referred to in paragraph (f) and (g)."

89. Pausing at this point it is clear – as Humphreys J. noted at paragraph 129 of his judgment – that one key object of these core strategy provisions is to ensure that development plans take proper account of projected population growth in any given areas. This in turn implies that the promiscuous and unlimited rezoning of land for residential land – which in the past was often an unhappy feature of the entire development plan process – should no longer be permitted. It was against this background that Simons J. concluded in *Heather Hill Management Co. CLG v. An Bord Pleanála* [2019] IEHC 450 that the grant of a planning permission for large scale residential units at Bearna, Co. Galway amounted to a material breach of the development plan, precisely because this development would in itself have breached the projected population for the area by 25%. It followed that as "the permitted development, at one fell swoop bursts through those figures" in the development plan, this of necessity had to be a material breach: see paragraph 24 of the judgment.

90. Resuming our exposition of the statutory provisions, one may next note that s. 11(1)(b) of the 2000 Act provides:

"(1)(b) For the purpose of enabling the incorporation of the National Planning Framework and a regional spatial and economic strategy into a development plan—

(i) where notice of a development plan review to be given in accordance with paragraph (a), (aa) or (ab) is prior to the making of the relevant regional spatial and economic strategy, then notice of the review shall be deferred until

not later than 13 weeks after the relevant regional spatial and economic strategy has been made,

(ii) (where a development plan review referred to in paragraph (a), (aa) or (ab) has commenced and a draft plan has not been submitted to the members of the planning authority concerned in accordance with subsection (5)(a) prior to the making of the relevant regional spatial and economic strategy, then the review process shall be suspended until not later than 13 weeks after the making of the relevant regional spatial and economic strategy,

(iii) where notice of a development plan review to be given in accordance with paragraph (a), (aa) or (ab) would, but for this subparagraph, be more than the period of 26 weeks after the making of the relevant regional spatial and economic strategy, then each planning authority concerned shall, within that period, either—(I) give notice of a development plan variation in accordance with section 13, or (II) give notice of a development plan review.

91. Section 11(1A) provides that:

"The review of the existing development plan and preparation of a new development plan under this section by the planning authority shall be strategic in nature for the purposes of developing —

(a) the objectives and policies to deliver an overall strategy for the proper planning and sustainable development of the area of the development plan, and

(b) the core strategy,

and shall take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government."

92. Section 12(11) further provides that:

"(11) In making the development plan under subsection (6) or (10), the members shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government."

93. Completing the statutory picture, s. 12(18) provides that:

"(18) In this section 'statutory obligations' includes, in relation to a local authority, the obligation to ensure that the development plan is consistent with —

(a) the national and regional development objectives specified in —

(i) the National Planning Framework, and (ii) the regional spatial and economic strategy,

and (b) specific planning policy requirements specified in guidelines under subsection (1) of section 28."

94. It is next necessary to examine the relevant provisions of the NPF and RSES. Under the heading "Securing Compact and Sustainable Growth", National Policy Objective 3c stated that:

"A preferred approach would be compact development that focuses on reusing previously developed, 'brownfield' land, building up infill sites, which may not have been built on before and either reusing or redeveloping existing sites and buildings. … In the long term, meeting Ireland's development needs in housing, employment, services and amenities on mainly greenfield locations will cost at least twice that of a compact growth-based approach. Accordingly, subject to implementation of sustainable planning and environmental principles, the National Planning Framework sets the following urban development targets: …

National Policy Objective 3c

Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints." Section 4.5 of the NPF is entitled, "Achieving Urban Infill/Brownfield Development" and states, *inter alia*: "The National Planning Framework targets a significant proportion of future urban development on infill/brownfield development sites within the built footprint of existing urban areas. This is applicable to all scales of settlement, from the largest city to the smallest village."

95. The NPF also envisages (at page 95):

"Projecting housing requirements more accurately into the future at a Regional Spatial and Economic Strategy and local authority development plan level (e.g., through Core Strategies) will be enabled by the provision of new statutory guidelines to ensure consistency of approach, implementation and monitoring.

National Policy Objective 36

New statutory guidelines, supported by wider methodologies and data sources, will be put in place under Section 28 of the Planning and Development Act to improve the evidence base, effectiveness and consistency of the planning process for housing provision at regional, metropolitan and local authority levels. This will be supported by the provision of standardised requirements by regulation for the recording of planning and housing data by the local authorities in order to provide a consistent and robust evidence base for housing policy formulation."

96. Section 4.5 of the NPF further provides – echoing the earlier language of Objective 3c – that it "targets a significant portion of future urban development on infill/brownfield sites within the built footprint of existing urban areas."

97. The then NPF then provides (at 137) that Objectives 72a, 72b and 72c have to be read in conjunction with Appendix 3 of that document:

"A new, standardised methodology will be put in place for core strategies and will also address issues such as the differentiation between zoned land that is available for development and zoned land that requires significant further investment in services for infrastructure for development to be realised. This is set out in Appendix 3.

National Policy Objective 72a

Planning authorities will be required to apply a standardised, tiered approach to differentiate between i) zoned land that is serviced and ii) zoned land that is serviceable within the life of the plan.

National Policy Objective 72b

When considering zoning lands for development purposes that require investment in service infrastructure, planning authorities will make a reasonable estimate of the full

cost of delivery of the specified services and prepare a report, detailing the estimated cost at draft and final plan stages.

National Policy Objective 72c

When considering zoning land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development."

98. The NPF then deals with Prioritising Development Lands:

"There are many other planning considerations relevant to land zoning beyond the provision of basic enabling infrastructure including overall planned levels of growth, location, suitability for the type of development envisaged, availability of and proximity to amenities, schools, shops or employment, accessibility to transport services etc.

Weighing up all of these factors, together with the availability of infrastructure, will assist planning authorities in determining an order of priority to deliver planned growth and development. This will be supported by updated Statutory Guidelines that will be issued under section 28 of the Planning and Development Act 2000 (as amended).

National Policy Objective 73a

Guidance will be developed to enable planning authorities to apply an order of priority for development of land, taking account of proper planning and sustainable development, particularly in the case of adjoining interdependent landholdings.

National Policy Objective 73b

Planning authorities will use compulsory purchase powers to facilitate the delivery of enabling infrastructure to prioritised zoned lands, to accommodate planned growth.

National Policy Objective 73c

Planning authorities and infrastructure delivery agencies will focus on the timely delivery of enabling infrastructure to priority zoned lands in order to deliver planned growth and development."

99. Appendix 3 of the NPF addresses the tiering of land issues:

"A Methodology for a Tiered Approach to Land Zoning

The National Planning Framework sets out a two-tier approach to land zoning as follows:

Tier 1: Serviced Zoned Land

This zoning comprises lands that are able to connect to existing development services, i.e. road and footpath access including public lighting, foul sewer drainage, surface water drainage and water supply, for which there is service capacity available, and can therefore accommodate new development. These lands will generally be positioned within the existing built-up footprint of a settlement or contiguous to existing developed lands. The location and geographical extent of such lands shall be determined by the planning authority at a settlement scale as an integral part of the plan-making process and shall include assessment of available development services. Inclusion in Tier 1 will generally require the lands to within the footprint of or spatially sequential within the identified settlement.

Tier 2: Serviceable Zoned Land

This zoning comprises lands that are not currently sufficiently serviced to support new development but have potential to become fully serviced within the life of the plan i.e. the lands are currently constrained due to the need to deliver some or all development services required to support new development, i.e. road or footpath access including lighting, foul sewer drainage, surface water drainage, water supply and/or additional service

capacity. These lands may be positioned within the existing built-up footprint of a settlement, or contiguous to existing developed lands or to tier 1 zoned lands, where required to fulfil the spatially sequential approach to the location of the new development within the identified settlement. The potential for delivery of the required services and/or capacity to support new development must be identified and specific details provided by the planning authority at the time of publication of both the draft and final development or area plan. This infrastructural assessment must be aligned with the approved infrastructural investment programme(s) of the relevant delivery agency(ies), for example, Irish Water, or be based on a written commitment by the relevant delivery agency to provide the identified infrastructure within a specified timescale (i.e. within the lifetime of the plan). The planning authority may also commit to the delivery of the required and identified infrastructure in its own infrastructural investment programme (i.e. Budgeted Capital Programme) in order to support certain lands for zoning. The written infrastructural assessment of the planning authority must:

a) include a reasonable estimate of the full cost of delivery of the required infrastructure to the identified zoned lands.

b) Set out (a) above at both the draft plan and final plan stages of the plan making process.

Current development or area plans may include zoned lands that cannot be serviced during the life of a development or area plan by reference to the infrastructural assessment of the planning authority. This means that they cannot be categorised as either Tier 1 lands or Tier 2 lands per the above and therefore are not developable within the plan period. Such lands should not be zoned for development or included within a development plan core strategy for calculation purposes. Further guidance will be provided in updated Statutory Guidelines that will be issued under s.28 of the Planning & Development Act, 2000 (as amended)."

The requirements of the NPF

100. Before considering any of the statutory provisions in detail or the potential impact of the NPF, it is worth observing – as Humphreys J. did (at paragraph 125) – that the overall effect of these provisions is to constrain to some degree the Council and the elected members so far as the making of development plans are concerned. Some allowance must, of course, be made for the large scale nature of this exercise and it would be unrealistic to expect perfect consistency or alignment with national planning guidelines or frameworks such as the NPF. The elected members are, nonetheless, not at large, and any such development must align itself at least in general with certain national and local policy objectives. In *Highlands Residents Association v. An Bord Pleanála* [2020] IEHC 622, McDonald J. made comments to similar effect when he remarked (at para. 39) that the provisions of s. 10(1A) of the 2000 Act were "clearly designed to ensure that the development objectives in a development plan are consistent, as far as practicable, with national and regional development objectives."

101. In many ways the key question so far as this appeal is concerned is the extent to which the operation of the NPF is intended to be prescriptive. On this point, Killegland maintains, in essence, that this aspect of the development plan is not consistent with the objectives of the NPF, principally because this this 0.8ha site is located right in the heart of Ashbourne and is a classic in-fill site of the kind deemed suitable for housing and residential development by objective 3c of the NPF. If objective 3c had been made the equivalent of a mandatory statutory obligation so that it required *every* in-fill site of this kind to be zoned suitable for housing, then the applicant's case would have much to commend it.

102. Where I respectfully part company with the arguments advanced by Killegland on this point is that I do not consider that one can read either the relevant statutory provisions –

particularly s. 12(18) – or the objectives of the NPF in this way. In the first instance, s. 12(18) simply requires that the development plan is "consistent" with the "objectives" of the NPF. Like Humphreys J., I read this language as meaning consistent generally, as distinct from complying in every detailed and minor particular. The language of objective 3c is moreover generally precatory ("…a preferred approach…") rather than imposing a legally prescriptive standard which required *every* available in-fill site to be zoned for housing. This is further reflected in section 4.5 of the NPF which, as we have seen, speaks of a "target" of a "significant proportion of future urban development on infill/brownfield development sites" within existing settlements.

103. All of this again suggests that the NPF is in this respect as I have just said largely precatory and aspirational. It might well have been different if the development plan had shown a casual disregard throughout the county of the need to encourage in-fill development on brownfield and other sites immediately contiguous to the core areas of each urban settlement, but that particular case has never been advanced. As Humphreys J. also observed (at paragraph 146), one must also have regard to the fact that by contrast to the language of s. 12(18) the Oireachtas used mandatory and prescriptive language in other parts of closely related sections. Thus, for example, as we have already noted, s. 10(2A(a) provides that a core strategy "shall" contain sufficient information to show that development plans are "consistent" with the NPF. The obligation to provide the information is thereby made mandatory ("shall"), but a more accommodating standard ("consistent") is provided in relation to the actual contents of the development plan itself.

<u>The requirements of the RSES</u>

104. It remains to consider the contention that the de-zoning of the Killegland lands was not compatible with the requirements of the RSES. Although this point did not appear to have

been pressed at the oral hearing, it is nonetheless appropriate to consider it. Section 21 of the 2000 Act provides that a regional assembly may make a regional spatial and economic strategy. The Eastern and Midland Regional Assembly made such an RSES on 28th June 2018.

105. In this instance the RSES set out general planning objectives for the greater Leinster region in order to ensure effective regional development. It envisaged that Dublin, Dundalk, Drogheda and Athlone would be supported "by the complementary development and regeneration of a small number of selected Key Towns" (RSES, section 4.3). Maynooth and Navan were the "Key Towns" identified in the RSES which are immediately proximate to Ashbourne. Most of the RSES is programmatic and aspirational regarding the development of the general Leinster region.

106. The RSES sets out (at page 51) certain formal objectives. These include:

"RPO 4.1: In preparing core strategies for development plans, local authorities shall determine the hierarchy of settlements in accordance with the hierarchy, guiding principles and typology of settlements in the RSES, within the population projections set out in the National Planning Framework to ensure that towns grow at a sustainable and appropriate level, by setting out a rationale for land proposed to be zoned for residential, employment and mixed-use development across the Region. Core strategies shall also be developed having regard to the infill/brownfield targets set out in the National Planning Framework, National Policy Objectives 3a-3c.

RPO 4.2: Infrastructure investment and priorities shall be aligned with the spatial planning strategy of the RSES. All residential and employment developments should be planned on a phased basis in collaboration with infrastructure providers so as to ensure adequate capacity for services (e.g. water supply, wastewater, transport, broadband) is available to

match projected demand for services and that the assimilative capacity of the receiving environment is not exceeded."

107. In many ways the RSES mirrors – albeit that it is phrased perhaps in even more general terms – the requirements of the NPF regarding spatial development; the need to zone appropriately in respect of projected housing need and the promotion of in-fill sites, thereby concentrating housing development where possible in existing urban settlements already possessed of the appropriate infrastructure. For my part, for all the reasons already expressed with regard to the corresponding objectives contained in the NPF, I do not consider that this amounts to some imperative requirement that *all* in-fill sites (such as the present one) in existing urban areas *must* be zoned for housing development. It might be different if a development plan studiously avoided such zoning for in-fill sites throughout the county. As Humphreys J. observed (at para. 180) "these objectives are compatible with downzoning lands not required during the lifetime of the plan." I can only agree.

108. In these particular circumstances, one must conclude that the zoning of this particular in-fill site for community infrastructure did not breach the RPO 4.1 objective. As I have already explained, there was, after all, a clear rationale explaining the reasons for the de-zoning of these particular lands.

Part VIII - Conclusions

109. In conclusion, therefore, I consider that adequate reasons were given by the elected members for their decision in respect of this aspect of the development plan. It was clear that they wished to preserve the lands for the development of a public park and at all times the supporters of this proposal in the development plan made their views well known. One might accordingly say that the elected members were empowered by law to make a democratic decision regarding the scope of the development plan and this they duly did.

They took this decision principally for valid planning reasons in accordance with the terms of the 2000 Act and unlike cases such as *Flanagan* and *Griffin,* they did not have regard to irrelevant considerations in a manner which was material and central to their decision. Nor in the circumstances can one conclude that this de-zoning had the effect of infringing any relevant objectives delineated in either the NPF or the RSES. While one may understand Killegland's objections to this decision inasmuch as its lands presumably suffered a diminution in value as a result, I see no basis in law by which the validity of that decision can properly be impugned.

110. I would accordingly dismiss the appeal.