Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

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Legal Digest

Learning from Litigation

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Legal Cases:

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Prepared by Fieldfisher for the Office of the Planning Regulator

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Introduction

The Office of the Planning Regulator (OPR) is pleased to present the tenth edition of the '*Learning from Litigation*' bulletin. This bulletin has been prepared to highlight and disseminate key learnings from the continually evolving planning and environmental case law. It provides information on important precedents, court decisions and emerging trends with an overview of noteworthy planning cases.

The case selection for this edition of the bulletin was made following recommendations received from the Planning Law Bulletin Steering Group. This Group consists of nominees from the Law Society of Ireland's Environmental and Planning Law Committee, An Coimisiún Pleanála, the OPR legal services provider Fieldfisher LLP, the County and City Management Association and the OPR.

Disclaimer: This document is for general guidance only. It cannot be relied upon as containing, or as a substitute for legal advice. Legal or other professional advice on specific issues may be required in any particular case and should always be sought before acting on any of the issues identified.

Case: Friends of Killymooney Lough (the Applicant) **v An Coimisiún Pleanála, the Minister for the Environment, Climate and Communications, Ireland and the Attorney General** (the Respondents); **and Tesco Ireland Limited** (Notice Party)

Date: 16 July 2025

Citation: [2025] IEHC 407

Judge: Humphreys J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to grant permission for the construction of a service station (the Proposed Development) which consisted of a retail unit, a drive thru café, a petrol filling station and all associated site works on a site to the east of Main Street, Cavan Town, Co. Cavan (the Decision). The Decision was subject to judicial review proceedings brought by Friends of Killymooney Lough (the Applicant).

Background

Tesco Ireland Limited (the Developer) applied to Cavan County Council (the Council) for permission in January 2023. The Applicant made a submission on the planning application in February 2023. The Council issued a decision to grant permission in October 2023. The Applicant appealed the Council's decision to the Commission in November 2023. The Developer replied to this appeal in December 2023. A draft Climate Action Plan 2024 was published in December 2023 for consultation and was approved by Government and published in May 2024 as the Climate Action Plan 2024 (CAP24). The Commission's Inspector prepared a report in October 2024 and the Commission issued a decision to grant permission in December 2024. The Applicant was granted leave to bring judicial review proceedings in February 2025.

Grounds of Challenge

The Applicant challenged the Decision on six grounds, summarised as follows:

1. The Commission had regard to a non-existent document which it referred to as the "*National Climate Change Policy – Project Ireland 2024*" and the Decision is invalid as this is irrelevant material;

2. The Commission failed to have regard to CAP24 and therefore failed to perform its functions in a manner consistent with the most recent approved climate action plan;

2A. As an alternative to ground 2, the Applicant claimed that if the Commission had regard to CAP24 (which the Applicant argued in core ground 2 was not the case) it failed to give the Applicant the opportunity to make submissions in relation to this;

3. If the Commission had in fact relied on CAP24 when making the Decision then the Decision is invalid as the Minister for the Environment, Climate and Communications (the Minister) erred in law in adopting CAP24;

4. The Commission failed to carry out a valid Environmental Impact Assessment (EIA) in the context of the significance of emission increases generated by the Proposed Development;

5. The Commission carried out a defective EIA in that it failed to consider the cumulative impacts of all vehicle emissions from all projects considering only a limited number of projects proximate to the Proposed Development.

Ground 1: Regard to allegedly non-existent document

This ground concerned a reference to "*National Climate Change Policy - Project Ireland 2040*" in the Inspector's Report. The Inspector stated that the Sustainability Statement submitted by the Developer outlined that the Proposed Development sought to comply with the principles set out in the "*National Climate Change Policy - Project Ireland 2040*".

The Applicant asserted that this document does not exist and the Inspector had regard to irrelevant material.

The Court acknowledged that the Inspector merely referred in a summary way to a description of a document referred to by the Developer in their submission on the appeal. The Court noted that while the Inspector's phrasing could have been improved, it found that the Applicant's complaint was ultimately formalistic and legalistic as, even if this allegation was correct, it was immaterial.

The Court found that it was clear that the Commission did consider climate issues more generally as required. The Court determined that there was no basis upon which this ground could lead to the Decision being quashed.

Ground 2: Failure to have regard to CAP24

The Applicant alleged that the Commission failed to have regard to CAP24, meaning it failed to correctly consider the requirements of government policy and to perform its functions in a manner consistent with the most recent approved climate action plan. The Applicant contended that there was no reference to CAP24 in the Decision or in the Inspector's Report. While the Decision did record that the Proposed Development *"...would be consistent with national climate ambitions..."* the Applicant argued that this was a formulaic reference and did not establish that the Commission had regard to CAP24.

The Commission accepted that CAP24 was not expressly referenced in the Inspector's Report, the Commission's Order or the Direction. However, the Commission contended that it did have regard to CAP24 and the absence of an express reference to CAP24 did not automatically mean that it did not have regard to same. Furthermore, the Commission argued that it could be reasonably inferred from the Decision that the Commission did have regard to CAP24 given that the Commission reached a conclusion of consistency with the Climate Action and Low Carbon Development (Amendment) Act 2021 (the 2021 Act) which requires consideration of the most recent approved climate action plan, which was CAP24. In addition one of the deciding

members of the Commission had also confirmed on affidavit that he was aware of and had regard to CAP24.

The Court noted that a decision enjoys a presumption of validity, which means that an administrative decision is presumed to have been made on a proper and valid basis by the decision-maker and an applicant must rebut this presumption in order to succeed in a claim that the decision is invalid. In this case the Decision explicitly concluded that a grant of permission would be consistent with the 2021 Act, which necessarily involves a finding of compatibility with CAP24. On this basis the Court was satisfied that the Commission had regard to CAP24. The Court also noted that affidavit evidence of a member of the Commission confirmed that he was aware of and had regard to CAP24. The Court noted that members of the Commission, similar to judges and tribunal members, have a stock of knowledge which they rely on when making decisions. The Court acknowledged that decision-makers are not novices and have their own knowledge to bring to their consideration of matters they are tasked with deciding.

Ground 2A: Failure to give the Applicant an opportunity to make submissions on CAP24

The Applicant alleged that in considering CAP24, there was a breach of the fair procedures required to be afforded to the Applicant in failing to allow the Applicant the opportunity to make submissions on CAP24.

The Court noted that the Decision was required to be consistent with the Climate Action and Low Carbon Development Act 2015 as amended by the 2021 Act, which necessarily includes the applicable climate action plan, and the Applicant should have already been aware of this. While the previous Climate Action Plan, CAP23, was superseded by CAP24 the Applicant accepted that CAP23 contained similar provisions to CAP24 in respect of transport emissions.

The Court decided that no meaningful unfairness was established by the Applicant, particularly where they could have addressed the substance of their point by reference to CAP23 in their appeal but failed to do so.

Ground 3: Invalidity of CAP24

The Court considered whether the Applicant was permitted to challenge CAP24 via this challenge to the Proposed Development.

The Applicant contended that the Decision was invalid in that if it was based on CAP24 that plan is itself invalid. The Applicant claimed that CAP24 was not consistent with the State's carbon budget programme and failed to set out a roadmap of actions that are required to comply with the carbon budget programme and sectoral emissions limits and for these reasons it is invalid.

The Court described this as being essentially an argument that CAP24 was not ambitious enough in achieving the aforementioned compliance. The Court found that the Commission had no jurisdiction to declare government policy documents invalid, and that even if the Applicant was correct in its argument on the ambition of CAP24 this did not mean that any decision which had regard to it is also invalid.

In essence, the Applicant's complaint here was academic and the hypothetical scenario where a better version of CAP24 could be produced did not give rise to grounds to invalidate the

decision. The Court concluded that this meant that the Applicant did not have standing to challenge CAP24.

Ground 4: Failure to carry out a valid EIA

The Applicant alleged that the Commission failed to carry out a valid EIA as it did not identify the '*significant effect*' associated with the increase in traffic that would be caused by the Proposed Development. The Applicant submitted that the Commission failed to determine the significance of the Proposed Development which would result in increased vehicle journeys and emissions at a time when emissions are required to be reduced in line with government policy.

The Court assessed a number of sub-issues under this ground. Among these, the Court accepted that while the national climate objective is to reduce emissions by 50% by 2030, this does not amount to a requirement to refuse planning applications that do not reduce emissions.

The Applicant claimed that the Commission failed to consider the significance of the impact of the Proposed Development by reference to the requirements to reduce transport emissions by 50.1%, and to reduce vehicle kilometres travelled by 20% by 2030. The Applicant claimed that the Commission had failed to determine whether the effect of the Proposed Development on the environment would be significant by reference to the national legal and policy obligations requiring a reduction of emissions. Instead, the Applicant claimed that Commission should have found that the EIA had inadequately described the significance of the emissions.

However, the Court did not accept this argument, finding that the Commission was entitled to reach a conclusion of "*no significant effect*" based on the amount of the increase in greenhouse gases caused by the project. In other words, emissions-causing projects may be regarded as having insignificant effects even where the overall national objective is to reduce emissions.

Ground 5: Failure to consider cumulative impacts of all vehicle emissions from all projects

This ground built upon the arguments made under ground 4, contending that the effect of increased emissions from the Proposed Development is significant when these emissions are considered cumulatively with all vehicle emissions from all projects. It was argued that the Commission failed to factor in the cumulative increase in emissions on a national level and the impact of that increase on its ability to authorise new projects.

The Court dismissed this argument, finding that the EIA Directive does not require all projects in the State to be assessed cumulatively and that the Commission did determine the question of whether the effect of the Proposed Development would be significant by reference to the legal and policy obligations requiring a reduction in emissions.

Application for Certificate for Leave to Appeal

The Applicant subsequently sought a certificate from the High Court granting leave to appeal this judgment. This application was refused on that basis that the questions proposed for appeal were never pleaded or argued during the substantive hearing and also because they were unworkable in practice, reliant on facts which were not established or raised issues which had already been clarified by the Supreme Court. However, the appeal certificate judgment is

notable because the Court set out three "*essential*" steps which form part of assessing a project that causes emissions. These are as follows:

(i) *"identification of net emissions – the budgetary nature of the process implies a need to quantify net greenhouse gases (GHGs) attributable to the project, including what would be scope 3 in EIA terms, net of mitigation and offsets (including mitigation/offsets proposed to be conditioned), as compared with a counterfactual baseline scenario of no project (and thus a baseline scenario which may well not involve no emissions but rather an alternative level of emissions);*

(ii) *evaluation against targets – in the event that there are net GHG emissions, a determination of whether the emissions so identified come within the available headroom both nationally and sectorally as provided for in relevant climate policy instruments; and*

(iii) *evaluation of practicability of compliance – in the event of any excess of emissions over available headroom, a determination as to whether the non-compliance involved is justified by considerations of practicability, such as for example by imperative needs of energy security".*

While this is not binding, and the Court made clear that there may be further steps to take in such an assessment, it is instructive as to how a decision-maker should approach the assessment of projects that cause emissions.

Key Takeaways

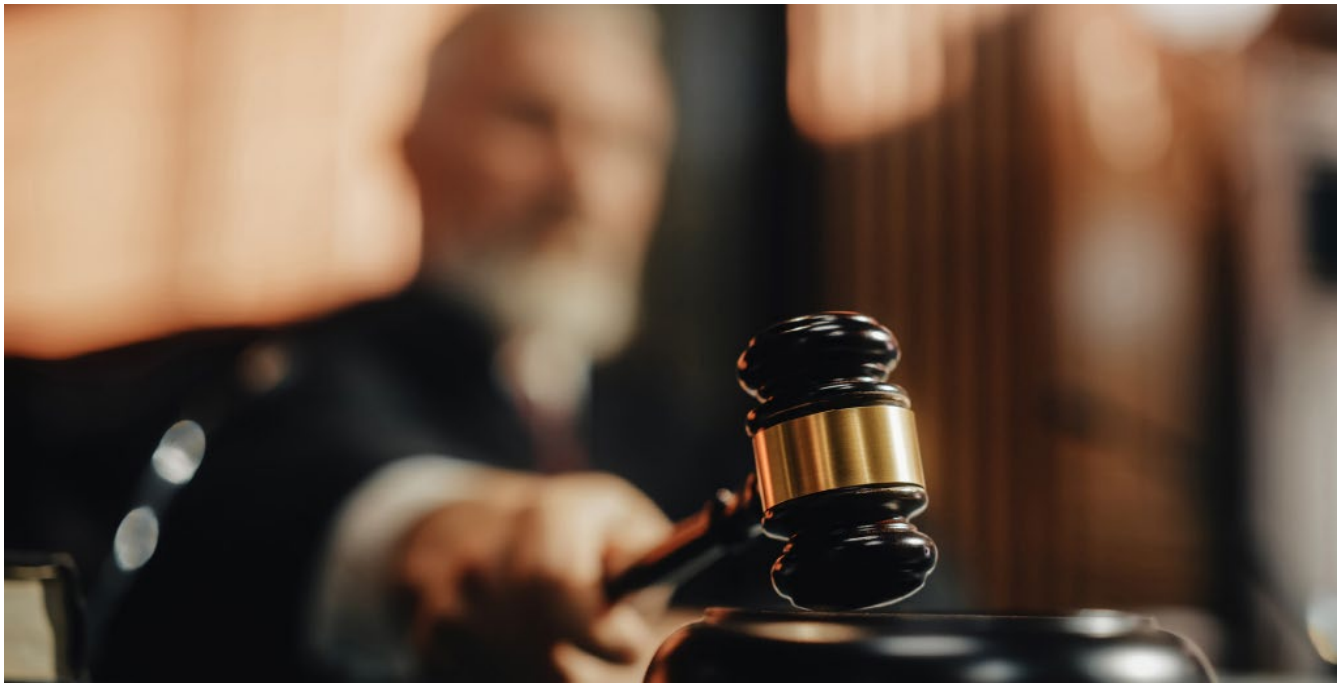
- A national objective to reduce emissions does not automatically mean that no emissions-causing projects can be permitted. However, the emissions being caused require an assessment as to whether they are justified by considerations of practicability such as the need for energy security.

- A decision should be presumed to be valid if a reasonable person could read it in a way which would make it valid.

- Decision-makers are not novices. They have, and are entitled to apply, their own knowledge relevant to the field they are expert in.

- An applicant for permission (or a third-party appellant) is not entitled to make submissions on every relevant development in policy relating to the application. However, they are entitled to make submissions on developments that occur where the failure to provide them with such an opportunity would amount to a meaningful unfairness.

A full copy of the substantive judgment is available **here** and the appeal certificate judgment is available **here**.



Case: Karla Moran (the Applicant) **v An Bord Pleanála** (Respondent); **and Kildare County Council and Ann Guiden** (Notice Parties)

Date: 26 September 2025

Citation: [2025] IEHC 510

Judge: Farrell J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to refuse to grant permission for the retention of the change of use of a detached garage to habitable family accommodation where the applicant for permission could live (the Decision).

The development included the retention of works to the garage which involved the addition of windows to the front and roof of the garage (the Flat). Planning permission was also sought for the construction of a 20 metre glazed link (the Link – together with the Flat comprise the Proposed Development) from the garage to the family home (the House). The applicant for permission challenged the refusal (the Applicant). Kildare County Council (the Council) had refused the application in the first instance.

Background

The Applicant was an adult who had special or additional needs by reason of medical conditions who intended to live more independently in the Proposed Development, which would be connected to the family home.

The Court opened the judgment by noting that the Oireachtas has set the statutory framework for the making of planning decisions. The Court emphasised that the sympathetic personal circumstances of an applicant are not in themselves sufficient to override planning considerations.

The Court noted that the merits of an application are for the expert planning decision-makers. The Court highlighted that the courts cannot override the evaluative judgment of a statutory decision-maker based on their disagreement with the merits of a decision, even if this merits disagreement was to be "*dressed in legal form*".

The Decision

While the Commission's Inspector considered that the provision of a family flat on the site of the Proposed Development was acceptable in principle, this was subject to compliance with the requirements of the Kildare County Development Plan 2023-2029 (the Development Plan).

The Inspector ultimately concluded that to permit the Proposed Development would be contrary to the provisions of Section 15.4.14 of the Development Plan.

The Commission decided to refuse permission based on the scale of the Proposed Development and the requirements of Section 15.4.14 of the Development Plan. The Commission found that the Proposed Development could not be reconciled with the requirements of the Development Plan which describes such a development as a "*temporary subdivision or extension of an existing dwelling unit*" which is "*a way of providing additional accommodation with a level of semi-independence for an immediate family member to accommodate an immediate family member*". In this regard, the Commission considered that the structure being located 20 metres from the main dwelling and connected via a 20-metre glazed link failed to address the "*temporary*" nature of such arrangements and the Development Plan requirement for the future reintegration of the family flat into the family home such that there would once again be one dwelling unit. The Commission also decided that the proposed glazed link would have a significant impact on the rear amenity open space and visual amenity.

The Commission concluded that the retention of the development would set "*an undesirable precedent for similar types of development and would seriously injure the residential amenities of properties in the vicinity*" and would be contrary to the proper planning and sustainable development of the area.

The Issues

The Court summarised the main issues raised in these judicial review proceedings as follows:

1. The issue of regard being had to the scale of the project;
2. The distance from/relationship with the main house;
3. The proposed glazed link;
4. The possible temporary nature of the development; and
5. The definition of residential amenity in the context of whether the link was contrary to proper planning and sustainable development.

1. The Scale

The Applicant contended that no part of the Decision "*identified any planning, amenity or environmental harm as a result of the distance between the house*" and the Proposed Development. The Applicant alleged that the Commission had applied a development standard which did not feature in the Development Plan.

The Court found that this was an "*excessively restrictive*" view of the evaluative planning judgment of the Commission. The Court observed that the Applicant:

- read the relevant provisions of the Development Plan narrowly;
- read the Decision in a manner which contradicts that narrow interpretation; and
- assumed that anything not contained in the specific policy must be contrary to the Development Plan.

However, the Court determined that this was an incorrect approach to interpretation. The Court set out that the Development Plan must be read by reference to its text, context and purpose. Furthermore, the Court noted that the Decision enjoyed a presumption of legality and a legally correct reading of the Decision was available.

The Applicant contended that the Proposed Development would not increase the size or scale of the existing buildings and was not a relevant consideration in circumstances where the relevant provision of the Development Plan does not refer to scale.

The Court held that scale "*is an inherently relevant planning consideration*" in determining whether a proposed development is consistent with the proper planning and sustainable development of the area even if scale is not referenced in the relevant provision of the Development Plan.

2. The Distance from the Main House

The Applicant argued that the Decision did not identify any planning, amenity or environmental harm as a result of the distance between the House and the Flat, and that the Commission had applied a standard that was not contained in the Development Plan. The Applicant argued that the Development Plan does not require accommodation such as the Flat to be provided within an existing house or, if located externally, to be within a certain distance of the existing house.

The Court found this to be a "*clear misreading*" of the relevant section of the Development Plan, which clearly noted, at several points, that distance from the main house is a relevant consideration.

While the Applicant contended that a previous decision of the Commission reached a different conclusion, the Court held that the Commission (or any appellate body) exercises planning judgement in respect of a specific planning application at the time that application is before it and in light of the relevant policy context, but these matters can change. The Court noted there may be specific cases which require explanations as to inconsistent decisions, however, in principle a decision-maker is not bound by precedent decisions. Furthermore, the decision-maker is not obliged to provide reasons for differing from such decisions as this would be unworkable in practice.

3. The Proposed Glazed Link

The Applicant argued that the Commission provided no reasons for departing from the Development Plan. Although the Court identified that this was a misconception based on the Applicant's own misinterpretation of the Development Plan. The Court outlined the correct approach to the level of reasons required to be provided in rejecting this point.

The leading judgment on reasons is the Supreme Court decision in *Connelly v An Bord Pleanála*[1] which confirmed the following points in respect of reasons:

1. Any person affected by a decision is at least entitled to know in general terms why the decision was made;

2. A person is entitled to have enough information to consider whether they can or should seek to appeal or bring judicial review proceedings in respect of the decision; and

3. The reasons provided must be such as to allow a court hearing an appeal or reviewing a decision to engage properly in such an appeal or review.

[1] [2018] IESC 31.

This has been supplemented by subsequent judgments which set out that:

- the decision-maker is required to provide the main reasons on the main issues;[2] and
- a decision should not be invalidated on the basis there is a lack of reasons if nobody could be in any real doubt as to what the reasons were.[3]

The Applicant also contended that if the Link was problematic, the Commission could have omitted this by condition. The Court identified that the Commission is not obliged to help applicants by reconfiguring their development proposal by condition. The Court noted that the Commission may impose such conditions in cases where it would be beneficial but there was no legal requirement on the Commission to do so.

The Court determined that the real issue here was that to omit the Link by condition would give rise to a breach of the Development Plan that the Flat be connected to the House, so the Commission would still be required to reject the application for permission. Accordingly, the Court rejected this argument.

4. Possible Temporary Nature of the Development

The Applicant contended that the Flat could be reconfigured to its prior use as a garage once it was no longer being used as a residential unit, and that in concluding that the Flat was incapable of this reversion of use the Commission had applied an impossible standard to the test of the temporary nature of development. The Applicant also argued that the Commission had failed to adequately consider the circumstances of the Applicant and their family. The Court rejected this argument for three main reasons:

1. The issue of whether a flat can be reintegrated into a main house requires evaluative judgment which has been entrusted to the Commission. Disagreeing with the merits of the Decision reached by the Commission does not amount to a legal ground of challenge for the Court to determine;

2. The Applicant's assertion that the Commission applied "*an impossible standard … in the circumstances*" is an argument that the Applicant must be allowed to have permission. This is not a legal ground of complaint. The Court found that the Commission is entitled to use its evaluative judgement to set a standard even if a particular applicant is not going to reach that standard in an application. The Court found that the statement that an "*impossible standard*" has been applied "*is simply a merits-based disagreement framed in legal form*"; and

3. The Commission was obliged to consider the Applicant's circumstances but through the lens of proper planning and development, and sympathetic circumstances do not give rise to a right to the grant of permission.

[2] O'Donnell v An Bord Pleanála [2023] IEHC 381.
[3] Killegland Estates v Meath County Council [2023] IESC 39.

5. Definition of Residential Amenity

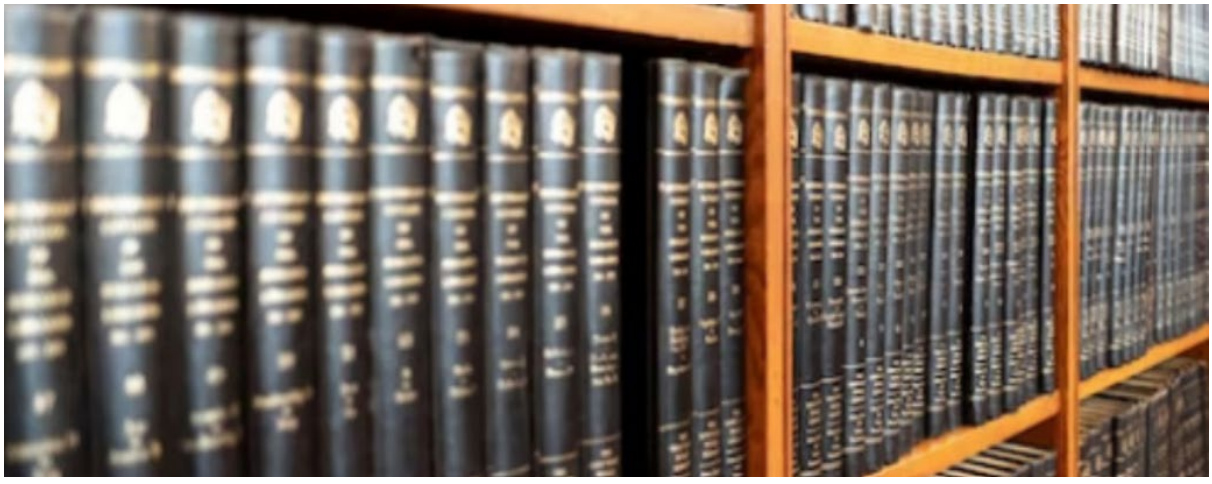
This issue related to the Link being considered to be contrary to proper planning and sustainable development due to the impact it would have on residential amenity.

The Applicant contended that the Inspector took no issue with the design or location of the Flat aspect of the Proposed Development, and the issues with the Link had already been addressed (under the headings above).

The Court considered this to be an "*over-positive interpretation*" of the Inspector's Report. The Court found that impacts on open spaces and visual amenity fall within the definition of residential amenity, and these are matters which come within the realm of evaluative planning judgment. While the Inspector found that the design of the Flat would not detract from the amenities of the House, this was not inconsistent with the Commission's finding in respect of the negative impact of the Link on residential amenities.

Conclusion

The Court concluded its judgment by repeating that even where a court has sympathy for the individual circumstances of an applicant, those circumstances do not amount to a right to disregard or override planning law or the Development Plan. The Court stated that the Commission is obliged to consider such circumstances properly insofar as they are relevant to considerations of proper planning and sustainable development, to give reasons for its decision and to comply with other relevant legal standards.



Key Takeaways

- Sympathetic circumstances are not a basis for overriding the planning considerations which have been set for the making of planning decisions.

- The merits of a planning application are for the expert planning decision-makers, and the courts cannot override the evaluative judgment of a statutory decision-maker based on their disagreement with the merits of a decision, even if this merits disagreement was to be "*dressed in legal form*".

- A decision of a public body enjoys a presumption of validity and where there is a legally correct reading of that decision available that is the reading that should be preferred.

- In principle a decision-maker is not bound by precedent decisions and is not obliged to provide reasons for differing from such decisions as this would be unworkable in practice.

- The requirement to provide reasons can be broadly summarised as follows:
    a. A person is entitled to know in general terms why the decision was made to the extent that they have sufficient information to consider whether they can or should seek to appeal the decision, and the reasons should be sufficient to allow a court or appeal body to engage properly in that appeal;
    b. The decision-maker should provide the main reasons on the main issues; and
    c. A decision should not be invalidated on the basis there is a lack of reasons if nobody could be in any real doubt as to what the reasons were.

- A planning authority is not obliged to help applicants by reconfiguring their development proposal by condition, but they are entitled to do so where they deem it

- beneficial.

- A planning authority is entitled to use its evaluative judgment to set a standard even if a particular applicant is not going to reach that standard in their application.
full copy of the judgment is available **here**.

Case: Ailsa Sexton (the Applicant) v **An Bord Pleanála** (the Respondent); **and Fingal County Council** (Notice Party)

Date: 31 July 2025 – delivered ex tempore[4]

Citation: [2025] IEHC 449

Judge: Holland J.

Background

The Applicant submitted a planning application to Fingal County Council (the Council) for the proposed development of horse stables and other facilities for an equestrian business (the equestrian element) and a house for the Applicant from which she would run the business (the residential element). In applying for permission to the Council, the applicant relied on a policy in the Fingal County Development Plan 2017-2023 (the 2017 CDP) which favoured permission for one-off rural housing for applicants who intended to operate home-based businesses requiring a rural location and which would contribute to the rural environment.

The Council refused permission by decision dated 28 February 2023. The Applicant lodged an appeal with An Bord Pleanála (referred to hereafter as the Commission)[5] on 13 March 2023. The Commission's Inspector recommended that permission be granted. By decision dated 2 April 2024, the Commission issued a split decision to grant permission for the equestrian element and refuse permission for the residential element. By the time the Commission made its decision, the Fingal County Development Plan 2023-2029 applied (the 2023 CDP) although the relevant policies were similarly worded as in the 2017 CDP. The 2023 CDP came into effect on 5 April 2023.

Judicial Review

The Applicant issued judicial review proceedings challenging the Commission's decision to refuse the residential element of the application. The Applicant challenged the decision on four core grounds but it was indicated by the Applicant's counsel at hearing that the case was primarily about the inadequacy of the Commission's reasons.

The only other aspect of the Applicant's case was that the Commission had imposed an *"undefined and impossible standard*" in considering the Applicant's application. The Court

[4] At the conclusion of a hearing judges will either deliver judgment at the time (known as an 'ex tempore' judgment) or deliver judgment at a later date (known as a 'reserved judgment'). An ex tempore judgment will often not be in writing and is a relatively unusual occurrence in planning judicial review. A detailed written version of the ex tempore judgment delivered by Judge Holland in this case has been published which makes it appropriate for inclusion in this bulletin.

[5] At the time of the judgment, the name of An Bord Pleanála had changed to An Coimisiún Pleanála pursuant to Section 495 of the Planning and Development Act 2024.

dismissed this aspect in brief terms noting that the argument was based on a misconception by the Applicant that planning decisions cannot be based on evaluative planning judgements.

Therefore, the case primarily dealt with whether the Commission had provided adequate reasons for its decision to refuse permission for the residential element.

The 2023 CDP permits new rural dwellings in areas which have zoning objectives RU (rural) or GB (greenbelt) where the applicant meets the criteria set out in Table 3.5.

The relevant provisions of Table 3.5 provide that a bona fide applicant will be required to satisfy the Council in their planning application "*of their long-term commitment to operate a full-time business from their proposed home in a rural area*". The applicant is also required to submit a comprehensive and professionally prepared business plan which demonstrates that the business is location dependent together with legal documentation to demonstrate that they have sufficient funding to start and operate the business.

It further states that "*verifiable documentary evidence to demonstrate compliance with Table 3.5 will be required in all planning permission applications for a new house in the open countryside including a sworn affidavit by the applicant stating that the applicant conforms to the requirements of the objective*".

Further, paragraph 14.12.8 of the 2023 CDP, which deals with new housing for the rural community other than those actively engaged in farming, states that "*[a]pplications must demonstrate full compliance with all relevant requirements set under Chapter 3 and Table 3.5*".

The Court described the requirement for a verifying affidavit in this context as "*highly unusual*". The Court also noted that the one-off rural housing policies in county development plans are unusual in that they relate to the identity and intention of the applicant whereas the general principle is that planning decisions should generally be blind as to issues of ownership and the identity of the owner. In the Court's view this reflected the relatively exceptional cases of permitting one-off rural houses when general housing policy was in favour of compact residential development.

In considering the planning documentation the Court was of the view that the business plan submitted with it seemed well-prepared. In relation to the funding of the business, the plan stated only that the applicant "*will fund the development costs estimated at €280,000 from her own resources*". The Court considered that it was clear that the planning application did not, however, contain any document which would satisfy the development plan requirement for "*legal documentation that they have sufficient funding committed to start and operate the business*".

The Court considered the Council's decision to refuse permission and the reasons stated in the Council's Planner's report which was adopted by the Council in its decision refusing permission. The reasons for refusal included that the information provided by the Applicant lacked sufficient detail to allow the Council to carry out a comprehensive assessment of the Applicant's compliance with the development plan criteria including that the Applicant had not satisfied the Council:

- Of their long-term commitment to operate a full-time business from their proposed home in a rural area.

- How the business will contribute to and enhance the rural community.

- That the nature of their employment or business was dependent on its location within the rural area.

Further, the Council stated that the Applicant had not submitted legal documentation to demonstrate that they had sufficient funding to start and operate the business and had not provided a sworn affidavit stating that the Applicant complied with the relevant requirements of the 2023 CDP. The Council also noted that the Applicant appeared to co-own a property in the area and that this would have to be clarified in order to demonstrate that the Applicant had a need for a new rural dwelling.

The Court noted that on appeal to the Commission, the Applicant's appeal did not include an affidavit of the kind required by the 2023 CDP nor did it include legal documentation confirming that she had sufficient funds committed to start and operate the business and simply ignored these issues.

The Commission's Inspector prepared a report recommending a grant of permission. The Inspector considered that the Applicant had complied with national and development plan policy and indicated that it was not clear how the documentation was deficient and noted that the Council could have requested further information.

The Commission, in refusing permission for the residential element, stated:

"The applicant had not provided adequate documentation which demonstrated their long-term commitment to operate a fulltime business from their proposed rural home, therefore failing to meet the necessary requirement. The proposed development would materially contravene the rural settlement strategy in the Fingal Development Plan 2023-2029 specifically 3.5.15.5 Table (iv). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspectors recommendation, the Board were mindful of the totality of the information on file and the absence of sufficient information to support the applicant's contention that the nature of the employment would sustain full time employment"

In reviewing the Commission's decision as to the adequacy of the reasons, the Court indicated that planning decisions must be interpreted as a whole, in context and where reasonably possible as valid rather than invalid. The Court also noted the obligation on the Commission where it is departing from a recommendation of its Inspector to give the main reasons for not accepting the recommendation, described by the Court as an "*enhanced duty to give reasons*". This enhanced duty was in the Court's view necessary as if the Commission rejects the Inspector's reasons, it must state its own and secondly the Commission must engage with the Inspector's rationale with which it disagrees.

The Court identified that the purpose of reasons in this context is for a person to:

- Know if the Commission has directed its mind adequately to the issues it has to consider.
- Assess whether there is a reasonable chance of successfully judicially reviewing the decision.
- Arm themselves for such a review.
- Give sufficient information to enable the court to review the decision.

The Court noted that reasons for a decision may be derived in a number of ways including from a range of documents or from the context of the decision itself as long as the reasons can be readily identified. Further the Court found that the degree of reasoning required in a particular decision was case and context specific.

Ultimately the Court considered that the requirement to give reasons is to ensure that "*the reasonable, intelligent, informed participant in the process must not be left in any real doubt as to what were the Commission's main reasons on the main issues*".

In reviewing the Commission's reasons, the Court noted that the 2023 CDP required the Applicant to demonstrate and satisfy the Commission of certain matters and this meant more than merely asserting something but rather evidencing it.

One aspect of the Applicant's reasons challenge argued that it was "*inconsistent and irrational"* that the equestrian element was permitted while the residential element was refused. The Court noted that on first glance that may appear to be the case but when the unusual provisions of the 2023 CDP relating to one-off rural houses were taken into account it was understandable that the Commission might take a different view on that aspect as quite different considerations arose.

As noted above, in rejecting the Inspector's recommendation the Commission indicated that it had regard "*to the totality of the information on file*" and the absence of sufficient information to confirm that the equestrian business would sustain full time employment. The Court was slightly critical of the reference to the "*totality of the information on file*". The Court suggested that this may not be appropriate language in a large and complex file given that it is a vague term. However, in this case there was not a vast quantity of documents to consider and it was clear what was being referred to on a reasonable inquiry.

The Court noted that the Commission recorded the reason why it had disagreed with its Inspector was because of the absence of "*sufficient information to confirm that the equestrian enterprise would sustain full time employment*". In addition this coupled with the failure of the Applicant to demonstrate her long term commitment to operate a fulltime business from her rural home and the lack of documentation confirming that the Applicant had sufficient funds to start and operate the business, was sufficient, in the Commission's view, not to grant permission for the residential element.

Ultimately the Court concluded that the Applicant was left in no real doubt what the main reasons on the main issues were.

Whilst the Applicant alleged that the Commission had not adequately engaged with the Inspector's rationale for recommending granting the residential element, the Court

considered that the obligation to engage with the Inspector's rationale must be viewed in the context that the Inspector provided little explanation for his disagreement with the Council and for his view that the documents provided complied with the requirements of the 2023 CDP. In reality, the Commission was presented with two views on the application and chose the Council's view over the Inspector's view.

The Court concluded therefore that having reviewed the documentation provided, the Commission's main reasons on the main issues, both in relation to its decision on the application and its reasons for disagreeing with the Inspector, were identifiable and clear.

The Court suggested that as a matter of good practice, the Commission would ideally have stated its reasons in more detail in the decision itself. While this was not necessarily required as a matter of law the Court suggested that it might have helped to avoid the judicial review.

In summary, the Commission's refusal relied on the failure by the Applicant to submit particular documents. In response to the Applicant's argument that she was never asked for those documents, the Court dismissed this on the basis that she was required to provide them to comply with the requirements of the development plan. The Court noted that it was clear from the Council's decision that these documents had to be provided but the Applicant did not supply this documentation in her appeal. The Court considered that the Commission could have requested the documents from the Applicant but that there was no legal obligation to do so.

Key Takeaways

- Where a decision-maker is required to be satisfied of a particular matter, this requires the submission of evidence. Simply asserting that something is satisfied is unlikely to be sufficient.

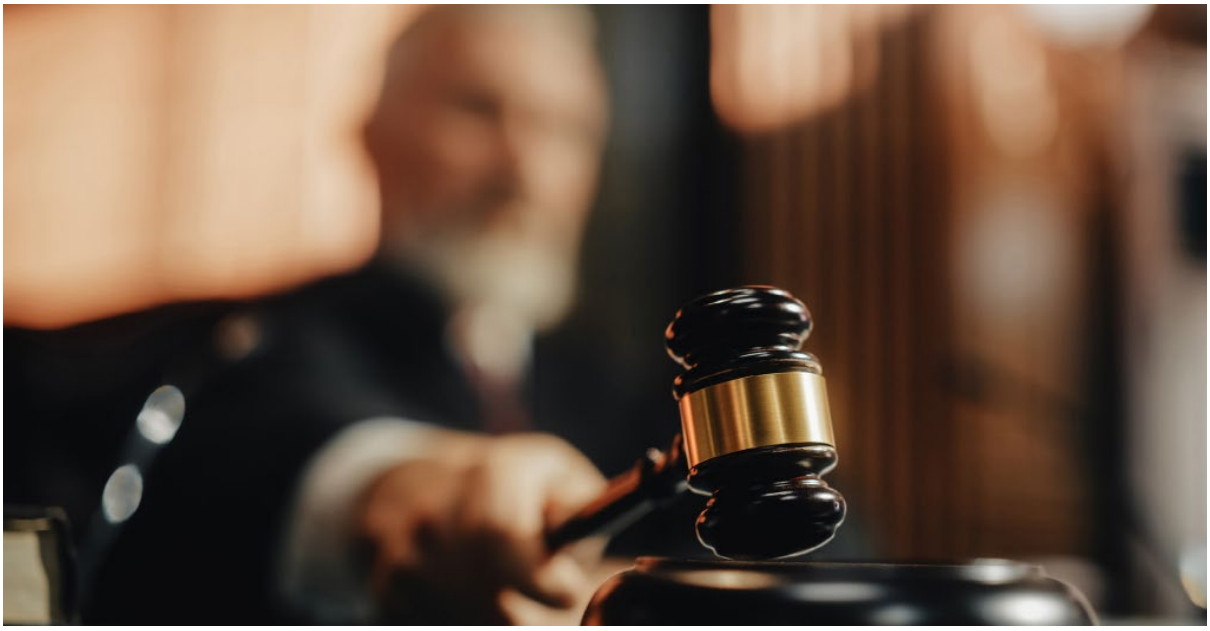
- Reasons do not need to be contained in the decision itself. They can be found in other documents provided it is reasonably clear what the reasons are.

- Where the Commission disagrees with a recommendation of its Inspector in relation to whether to grant or refuse permission, there is an enhanced duty on the Commission to give reasons.

- Where the Inspector's rationale does not engage with the detailed decision of the local authority and the Commission agrees with the local authority's decision, this may be sufficient to discharge the Commission's obligation to engage with the Inspector's rationale.

- One-off rural housing policy in county development plans is an exceptional situation where the identity and intention of the applicants can be taken into account by the decision-maker in contrast to the general principle that planning decisions should not take into account the circumstances of the individual applicant or identity of the landowner.

A full copy of the judgment is available **here**.



Case: Jane Phelan Walsh (the Applicant) **v An Bord Pleanála** (the Appellant); **and Fingal County Council** (Notice Party)

Date: 8 October 2025

Citation: [2025] IEHC 533

Judge: Nolan J.

This judgment of the High Court (the Court) concerned a decision of An Bord Pleanála (now An Coimisiún Pleanála, hereafter referred to as the Commission) to refuse to grant planning permission (the Decision) for the construction of a dwelling house in a rural location (the Proposed Development). The applicant for permission challenged this refusal (the Applicant). Fingal County Council (the Council) had refused this application in the first instance.

The Court considered that the net issue in these proceedings related to the status of the Applicant and the Proposed Development within the context of a rural location and the statutory obligation of the Commission to give reasons where it disagrees with the recommendation of its Inspector.

The Court opened the judgment by labelling it "*ironic*" that in the middle of a national housing crisis that a planning authority would reject a development on the sole basis that an Applicant who has lived and worked all their life in the area of a rural village, wishes to live less than four kilometres outside that rural village.

Background

The Applicant grew up in the rural locality of the Proposed Development and operated a hairdressing business (the Business) in the nearby local village of Ballyboughal while living in rented accommodation "*in and around North County Dublin*". The Applicant contended that rented accommodation was unsuitable, unsustainable and lacked security, having regard to the costs and size of her family. She had been living in rented accommodation with her partner and five children. The Applicant suggested there was an absence of suitable affordable houses for sale in the Ballyboughal area. She noted that she was, however, in a position to build a 2.5 storey, five-bedroom house. The Applicant also stated on affidavit that if she did not get planning permission for the Proposed Development she would be homeless, and her business would close.

The Statutory Framework

The Court stated that "*the macro planning guidelines and framework documents have direct application in this case*" and detailed the three crucial documents forming part of the statutory framework for this case as follows:

a. **The Sustainable Rural Housing Guidelines for Planning Authorities April 2005 (the 2005 Guidelines)**

   The Court found that the 2005 Guidelines emphasised *"the requirement for planning authorities to tailor their policies for local circumstances*" to take into account the importance of rural generated housing and the benefits of same. The Court noted that Section 3.2.3 of the 2005 Guidelines dealt with "*persons who are an intrinsic part of the rural community*".

b. **The National Planning Framework 2040 (the NPF) (Published in 2018)**

   The Court identified Section 5.3 of the NPF and specifically National Policy Objective 19 (NPO 19) as being relevant. NPO 19 states: *"[i]n 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".*

c. **The Fingal County Development Plan 2023-2029 (the Development Plan)**

   The Development Plan contained the rural housing policy for the Council. Section 3.5.15.3 outlines that this "*serves to meet settlement needs which are the result of a genuine rural-generated housing requirement*". Within this section it is also noted that rural-generated housing needs are "*considered to be the housing needs of people who have long standing existing and immediate family ties, or occupations which are functionally related to the rural areas of the County and are specifically defined*". The definition that was deemed most relevant to this case was:

   "*Persons who have been in long term employment, which is related to, and supportive of, the rural community as defined in Table 3.5 paragraph (ii) and where the employment is dependent on the residence of the person within the rural community*".

   Table 3.5 sets out the Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing and item (ii) in that table refers to: "*A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19th October 1999. Documentary evidence of such employment is required*".

The Council's Decision

The Court observed that the Council decided that the Applicant had not adequately demonstrated compliance with the Rural Settlement Strategy. This decision was based on the fact that the Business was located within the rural village of Ballyboughal, approximately 5.5 kilometres from the site of the Proposed Development and therefore was not intrinsically linked to the rural area and did not satisfy local needs criteria.

The Court noted that the Council stated in its decision that "*it is not considered that the nature of the employment meets the criteria stipulated such as to necessitate a dwelling house in a rural area remote from the location of the employment where alternative housing zoned lands are available within the rural village to meet this need*". The Council refused permission for the Proposed Development on this basis.

The Appeal

The Applicant appealed the Council's Decision to the Commission. The Court noted that the Applicant submitted a report which made clear that properties in a four kilometre radius of the village were either unaffordable, too small for the needs of the Applicant or required significant further investment. The grounds of appeal were summarised in the Commission's Inspector's Report. The Applicant contended that they have intrinsic ties to the area, rent in the local area and there are no suitable houses available. This required the Applicant to build their own house to remain within that area and, given that the Applicant operates a hairdressing business and the Development Plan supports rural enterprise, there was scope for the Applicant to be granted permission as they had a rural generated housing need within the meaning of Table 3.5(ii).

The Inspector's Report addressed these grounds of appeal. The Inspector observed that the Council's primary consideration appeared to be that the nature of the Business operated by the Applicant did not fall within the parameters of being "*a core rural enterprise engaged in a particular employment or business which will contribute to and enhance the rural community, address and satisfy local needs, and protect and promote the rural community*". However, the Inspector went on to state that businesses which are not agricultural businesses are also of major importance to the rural community and, in the absence of these services, "*...rural dwellers would be required to travel outside of their area to avail of such services and impact on sustaining rural areas and rural communities*".

While the Commission disagreed with the Inspector and relied on the decision of the Council, the Court found that the Commission's description of the Council's decision was "*in point of fact*" not quite what the Council decided. The Court stated that the difference between the two was that the Council focused on the Applicant's business and incorrectly described the distance between the site of the Proposed Development and the Business, whereas the Commission said the Council did not consider that the nature of the employment met the criteria required in order to necessitate a house in a rural area remote from the employment location and the Applicant had not satisfactorily demonstrated that their employment could be considered to satisfy local needs by predominantly serving the rural community. The Court noted that the Council appeared to have dealt with this element before dealing with whether the Business met the requirements of Table 3.5(ii) and whether the Business predominantly served the rural economy. However, the Court found that the whole point of Table 3.5(ii) is to

allow a dwelling house in a rural area under specific conditions in the context of NPO 19 of the NPF, ministerial guidance and the 2005 Guidelines and to provide guidance to persons who are an intrinsic part of the rural community.

The Inspector recommended a grant of permission, essentially finding that operating a hairdressing business in the nearby local village of Ballyboughal, while not an agri-related business, is "*also of major importance in serving and sustaining the rural community and economy and in the absence of these services rural dwellers would be required to travel outside of their area to avail of such services and impact on the sustaining rural areas and rural communities*". Therefore, the Inspector determined that this was an occupation which satisfied local needs by predominantly serving the rural community/economy.

The Decision

The Commission disagreed with the Inspector and decided to refuse permission on the basis that the Applicant did not satisfactorily demonstrate they are in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community as set out in Table 3.5(ii) of the Development Plan. As a result, the Commission found that the Proposed Development would materially contravene the rural housing strategy in the Development Plan and be contrary to NPO 19 of the NPF which the Commission stated "*seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the rural area*".

The Commission's Decision stated that in disagreeing with the Inspector's recommendation to grant permission, the Commission disagreed with the Inspector's view that a hair salon business constituted a role which predominantly serves the rural community/economy as required by Table 3.5(ii) of the Development Plan. The Commission also addressed the Inspector's consideration of businesses that are not agri-related, finding as follows:

> "*While accepting that other services which are not related to agri-business are also of major importance in serving and sustaining the rural community and economy and in the absence of these services rural dwellers would be required to travel outside of their area to avail of such services which would potentially impact on sustaining rural areas and rural communities, the Board did not agree with the Inspector that this would correlate with the service provider needing to live in a rural area when the business itself is located within the urban area and customers travel to the urban area to avail of this service.*"

The Court found that "*In point of fact, that there were no reasons given in the decision, only conclusions...*".

The Decision documents are available on the Commission's website **here**.

Grounds of Challenge

The Applicant essentially challenged the Decision on the basis of inadequate reasons, contending that the Decision was invalid as it failed to state the main reasons and considerations on which it was based. The Applicant contended that the Commission failed to discharge this obligation in circumstances where it failed to engage "*in a meaningful way*" with the Inspector's recommendation or to provide an explanation for departing from the Inspector's recommendation.

The Commission contended that its refusal was based on the Applicant not being "*employed in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy*".

The Applicant argued that "*this reason*" could not be considered to satisfy the standard of "*main reasons for main issues*". The Applicant also contended that the Decision was irrational, involved the application of an impossible standard and an unduly strict interpretation of the Development Plan which is inconsistent with the planning code and routine planning practice.

The Commission contended that the main reasons and considerations for the Decision were stated and that the Applicant is not entitled to micro-reasons. The Commission argued it was clear to the Applicant that they did not meet the requirements of Table 3.5 of the Development Plan. Furthermore the Commission stated that the Business was located in an urban area and required customers to travel to the urban area to avail of the services of the Business. This meant it was not necessary for the Applicant to live in the rural area, and the Business was not dependent on the Applicant living in the rural area.

The Decision of the High Court

The Court found that where the Commission reaches a decision that differs from the recommendation of its Inspector then the Commission is obliged to indicate the main reasons for not accepting the recommendation, and that these reasons must be "*clear and understandable*". While the main reasons on the main issues is the standard that is required, the Court observed that "*[s]tating a conclusion or even repeating a conclusion is not a reason*". The Court stated that the obligation should not, however, be so onerous as to require the Commission "*to go into chapter and verse in relation to every issue*".

The Court stated that the central provision here was Table 3.5(ii) of Section 3.5.15.5 of the Development Plan, and found that the Applicant, in submitting that she cannot afford any of the houses within the catchment area of the rural village of Ballyboughal and that she has a need to live in that area, demonstrated an economic need. The Court stated that "*the crucial issues are whether the Applicant has a housing need and whether her business satisfies local needs by serving the rural community/economy*". The Court found that it was clear that the Business was satisfying local needs and therefore predominantly serving the rural community/economy.

The Commission argued that the fact the Business is located in an urban area and customers travel to the urban area to avail of its services meant that the Applicant did not need to live in the rural area. However, the Court dismissed this argument by asking "*where else would you put a hairdressing salon but in an urban setting?*".

The Court set out a number of matters which it found the Commission did not deal with or provide reasons on, including:

- The Applicant's evidence that if she could not live close to the Business it would close;
- The Applicant's housing need;
- The Applicant's inability to purchase a house or a site "*within the geographical boundaries permitted*";
- The availability or cost of alternative housing or zoned lands;
- An architect's report submitted by the Applicant which says that there was only one property in the rural village of Ballyboughal available, and that it and all other properties are unaffordable;
- All other criteria applicable to the Proposed Development had been complied with;
- The provision of the 2005 Guidelines that people who are part of the rural community should be facilitated by the planning system in all rural areas and to take a positive approach to applications from such persons in the areas referred to in circumstances where permission might otherwise be refused; and
- The Applicant's economic need.

While the Commission contended that a lack of affordability is not a matter which the Commission can consider, and personal circumstances cannot be seen to prevail or a system which distinguishes between differing financial considerations of different applicants would develop, the Court held that the NPF "*specifically refers that the provision of single housing should be considered based on a demonstrable economic or social need to live in a rural area*". The Court stated that it would find it hard to imagine a greater need to live in a rural area than the present need where there is no other available affordable housing.

Ultimately, the Court concluded that the Commission did not engage in any meaningful way with its own Inspector's Report and quashed the Decision. This judgment of the High Court is currently the subject of an application for leave to appeal to the Court of Appeal.

Key Takeaways

- The Sustainable Rural Housing Guidelines for Planning Authorities (April 2005) emphasise the requirement for planning authorities to tailor their policies for local circumstances.

- An applicant is entitled to reasons for a decision taken by a public body. Conclusions are not sufficient and do not amount to reasons.

- Where the Commission reaches a decision that differs from the recommendation of its Inspector then the Commission is obliged to indicate the main reasons for not accepting the recommendation.

- The personal circumstances of an applicant are relevant in determining whether there is an economic or social need for an applicant to live in a rural area.

A full copy of the judgment is available **here**.

These case summaries were prepared by members of the Planning and Environmental Department of Fieldfisher Ireland LLP (Craig Farrar and Rory Ferguson).

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Office of the Planning Regulator

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