



[2026] IEHC 395

**THE HIGH COURT
PLANNING & ENVIRONMENT**

[H.JR.2025.0000403]

**IN THE MATTER OF SECTION 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT
ACT 2000**

BETWEEN

MARK MACSWEENEY

APPLICANT

AND

**AN COIMISIÚN PLEANÁLA, THE MINISTER FOR HOUSING LOCAL GOVERNMENT AND
HERITAGE, IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

MARSHALL YARDS DEVELOPMENT COMPANY LIMITED

NOTICE PARTY

<i>Date of impugned decision:</i>	<i>30 January 2025</i>
<i>Date proceedings commenced:</i>	<i>26 March 2025</i>
<i>Date of main hearing:</i>	<i>21 May 2026</i>
<i>Date draft judgment circulated:</i>	<i>12 June 2026</i>

JUDGMENT of Humphreys J. delivered on Friday 19 June 2026

1. In *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, Woulfe J., 11 April 2024) (Charleton, O'Malley, Baker and Murray JJ. concurring), the Supreme Court set out how the question of material contravention of development plans is to be addressed, starting with engagement with the text of the plan alleged to have been contravened and moving on to a reasoned analysis of contravention and materiality. These requirements are not satisfied by a statement that permission should be granted. By necessary implication they cannot be satisfied either by a bald conclusion that the permission does not materially contravene the plan.

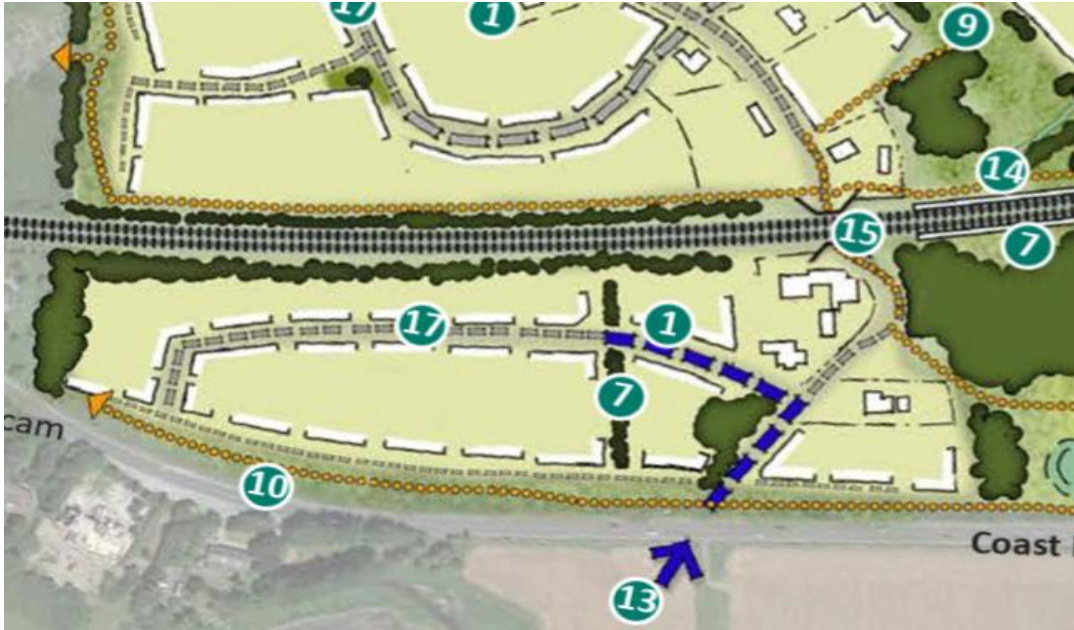
2. In the present case, the council rejected the application on the grounds of such a material contravention. The inspector also recommended rejection on the grounds of material contravention. The commission has, of course, power to overrule both of those institutional actors, but when braving the crossfire to go it alone without a seconder, one would have thought that prudence would dictate that particular attention be given to ensuring that all "t"s are crossed, all "i"s are dotted, and all ducks are in a row.

3. That was, unfortunately, not the case here.

4. Applying the law as settled by the Supreme Court to the particular facts here, the commission identified what it referred to as an element of the project that did not "align" with the plan but failed to address the question of materiality, moving instead to the question of justification, which it considered without reference to the applicable statutory test. On three other issues of material contravention identified by the inspector, the commission did not get much past step 1, either by reason of a failure to engage with the text of the plan provision, or by reason of a failure to make a reasoned decision on contravention.

5. The point will become clearer if we compare the Urban Framework Plan (UFP) map – what is supposed to happen, and the consented project – what did happen.

What the development plan said should be consented



What was consented



6. We can turn now to the specifics of the challenge.

Geographical context

7. The project (<https://www.pleanala.ie/en-ie/case/320747>) is a large-scale residential development (LRD) comprising the demolition of the existing shed and associated structures on site and the construction of 170 residential units, one crèche and all associated development works including the provision of pedestrian/cyclist facilities along the R338 public road connecting to Cranmore Rail Station, one ESB substation, one pumping station, the undergrounding of the existing ESB lines traversing the site, footpaths, lighting, parking, drainage, bicycle and bin stores and landscaping/amenity areas. Access will be *via* a new entrance on the L-71051 to the east. All at Cartron and Garraun South (townlands), Cranmore, Co. Galway. It is located at or near the following:

- Google Maps aerial view, undated: 53°16'25.7"N 8°57'13.3"W: <https://maps.app.goo.gl/UffJaM93dBewgUAt6>
- Google Maps Street View, July 2025: R338: <https://maps.app.goo.gl/dcZaFo1YXhC9hxRWA>

Parties

8. The applicant is Mark MacSweeney who is a neighbouring resident. The first named respondent is An Coimisiún Pleanála, the decision-taker. The second and third named respondents are the Minister for Housing, Local Government and Heritage, Ireland and the Attorney General. The notice party is Marshall Yards Development Company Limited, the developer.

Facts

9. On 17 June 2024, the notice party applied to Galway County Council for a LRD comprising a 171-unit development at Cartron and Garraun South (townlands), Oranmore, Co. Galway. An environmental impact assessment (EIA) screening report, an appropriate assessment (AA) screening and Natura impact statement (NIS) accompanied the application, along with other relevant documentation.

10. Upon receipt of the developer's application, the council sought submissions from the relevant prescribed bodies as to their views on the proposed development. Submissions were received from An Taisce, the Department of Housing, Local Government and Heritage, Transport Infrastructure Ireland and Uisce Éireann. The council also received third-party observations on the proposed LRD development which included submissions from the applicant dated 19 July 2024.

11. The council's planner prepared its report, dated 8 August 2024, in which it recommended that permission for the proposed LRD development be refused for five stated reasons.

12. By way of chief executive order, dated 8 August 2024, the council refused permission for the proposed LRD development.

13. On 4 September 2024, the notice party made a first-party appeal against the decision of the council to the commission. In support of its appeal, the notice party submitted revised and updated documents, including (i) a report from McCutcheon Halley Planning Consultants, (ii) updated drawings and reports from John Fleming Architects, NRB Consulting Engineers, Model Works, Simon Roanan Landscape Architects, (iii) an infrastructure report from AKM Engineers, and (iv) a revised AA screening report and a revised NIS prepared by Enviroguide. The first-party appeal addressed the reasons for refusal of the council and, in that context, presented a revised development proposal comprised of 170 residential units.

14. The applicant made a submission in respect of the appeal dated 30 September 2024.

15. On 21 November 2024, the commission noted that the information contained in the revised AA screening report and the NIS submitted by the developer in support of its appeal were "significant" and required the developer to advertise such revisions pursuant to s. 142(4) of the 2000 Act.

16. The applicant did not make any submission in response to the re-advertisement.

17. The commission appointed a planning inspector to prepare a report in respect of the appeal. There were four recorded observers in respect of the appeal, and the council also provided a response to the appeal. In his report dated 21 January 2025, the inspector recommended that permission be refused for three stated reasons.

18. As recorded in the commission's direction (BD-18736-25), dated 24 January 2025, the commission met on 23 January 2025 and considered the submissions on file and the inspector's report, and decided to grant permission by way of split decision 2:1, subject to 22 conditions.

19. By way of commission order, dated 30 January 2025, the commission granted permission for the LRD development subject to 22 conditions.

Procedural history

20. The applicant issued the proceedings on 26 March 2025.

21. Leave was granted on 7 April 2025.

22. The commission filed its statement of opposition and verifying affidavit on 18 August 2026, and subsequently filed an amended statement of opposition on 1 December 2025.

23. The State filed its statement of opposition and verifying affidavits on 12 February 2026.

24. The notice party filed its statement of opposition and verifying affidavit on 24 February 2026.

25. The applicant filed a replying affidavit on 16 March 2026.

26. The applicant delivered its submissions on 21 April 2026 (filed on 22 April 2026).

27. The commission delivered its submissions on 29 April 2026 (filed on 30 April 2026).

28. The State parties delivered their submissions on 6 May 2026.

29. The notice party delivered its submissions on 12 May 2026.

30. The statement of case was uploaded to ShareFile on 14 May 2026.

31. The matter was listed for callover on 18 May 2026.

32. The matter was listed for hearing on 21 May 2026.

33. Judgment was reserved at the end of that hearing. I would like to record my thanks to all of the lawyers involved for their unfailingly courteous, professional and helpful assistance. As I have previously sought to make clear, insofar as any points advanced are not being accepted in this or any other given judgment, that is solely to do with the inherent merits of such points and is not

reflection on those instructed to convey such points, a distinction that most certainly should be, and I believe generally is in fact, self-evident to all concerned.

34. On 12 June 2026, a draft of the present judgment was sent to the parties to give an opportunity to address matters such as errors/ambiguities on the basis set out below.

35. Parties are required to:

- (i) Read the draft or have their legal representatives if applicable do so on their behalf.
- (ii) Identify any matters falling within the below.
- (iii) positively communicate with the court in writing in response to the draft by the deadline specified, such responses to be emailed to the court and uploaded to ShareFile, either stating that they have no comments or setting out the comments,
- (iv) Carry out the foregoing without delay – the draft judgment procedure is a concession which parties can engage with but must do so with immediate dispatch, discipline and focus – it is not the opening of a new phase of the litigation that gives rise to “an entitlement to elaborate procedures at every point” (to use a phrase of O’Donnell C.J. (Dunne, Charleton and Baker JJ. concurring) in *O’Sullivan v. Health Service Executive* [2023] IESC 11 (Unreported, Supreme Court, 10 May 2023) at para. 39); and still less should the procedure invite the perhaps “serious error, to which lawyers are prone, to approach any such case on the tacit assumption that only procedures which approximate to a criminal trial are fair, and anything which departs from that is somehow dubious” (O’Donnell J. (Clarke C.J., McKechnie, MacMenamin, Dunne JJ. concurring) in *O’Sullivan v. Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 I.R. 751, [2018] 1 I.L.R.M. 245, 780).
- (v) Keep the draft confidential. Draft judgments are not public domain materials and, while they can be shared between the lawyers concerned and their clients, subject to the following, it is inappropriate for any person to refer to them for any purpose other than to assist the court in relation to the finalisation of the formal judgment. Therefore anyone with information as to the text, content or proposed outcome of any draft is required not to publish or transmit such information to others save solely by way of private transmission for the legitimate purposes of assisting in the finalisation of the judgment and subject to a similar restriction on any recipient. Trial participants should take reasonable steps to keep drafts confidential. On this topic, see *Attorney General v. Crosland (No. 2)* [2021] UKSC 58, [2022] 1 W.L.R. 367, [24/01/2022] T.L.R. 1 (Briggs, Kitchin, Burrows, Rose, Arden SCJJ) which discusses why restriction on publication of draft judgments is in the interests of the administration of justice; see also *Baigent v. Random House Group Ltd* [2006] EWHC 1131 (Ch), [2006] 5 WLUK 45, (2006) 150 S.J.L.B. 603 (Smith J.); *R. (Counsel General for Wales) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181, [2022] 1 W.L.R. 1915, [2022] 4 All E.R. 599 (Sir Geoffrey Vos MR; Davies and Dingemans LJ. concurring); *Public Institution for Social Security v. Banque Pictet & Cie SA and others* [2022] EWCA Civ 368, [2022] 3 WLUK 291, [2022] B.L.R. 349 (Carr L); Jackson and Simler LJ. concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

36. The foregoing constitutes an immediately effective direction of the court to the parties and anyone having notice of the draft judgment with effect from the date of circulation of the draft.

37. The responses should not be to reargue the substance (submissions to that effect will be disregarded) but are confined to matters such as:

- (i) informing the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment; and
- (ii) informing the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any typographical, factual, legal or other errors or ambiguities in the decision;
 - (b) any redaction of personal or other information that a party wishes to request;
 - (c) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any comment as to why such reference is not relevant or otherwise should not be included or why such matter if included should not lead to the proposed conclusion;
 - (d) any other matter in the draft judgment that the party considers should be omitted;

- (e) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view); and
- (f) any other suggestions as to the wording (as opposed to substance) of the decision if the proposed wording causes any significant issue for a party for any identified reason.

38. In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.

39. The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.

40. The deadline for such comments from the parties was to be 16:00 on Wednesday 17 June 2026. Comments were as follows:

- (i) applicant: no comments;
- (ii) commission: no comments;
- (iii) State: no comments; and
- (iv) notice party: helpfully pointed out some typos.

Relief sought

41. The reliefs sought are as follows:

"1. An Order of Certiorari, by way of an Application for Judicial Review, quashing the Order of the First Named Respondent (ABP Reference LH07.320747 (Planning Authority Case Reference 24/60733), made on the 30th January 2025 granting the Notice Party permission for a Large Scale Residential Development (LRD) comprising of the demolition of the existing shed and associated structures on site and the construction of 171 [recte 170] no. residential units, 1 no. creche and all associated development works including the provision of pedestrian/cyclist facilities along the R338 public road connecting to Oranmore rail station, 1 no. ESB substation, 1 no. pumping station, the undergrounding of the existing ESB lines traversing the site, footpaths, lighting, parking, drainage, bicycle and bin stores and landscaping/amenity areas, with access via a new entrance on the L-71051 to the east, at Cartron and Garraun South, Oranmore, County Galway.

2. Such Declaration(s) of the legal rights and/or legal position of the Applicant and (if and insofar as legally permissible and appropriate) persons similarly situated and/or of the legal duties and/or legal position of the Respondents as this Honourable Court considers appropriate.

3. A Declaration that the Second, Third and/or Fourth Respondents have failed to fulfil their obligations under Articles 3, 4(1) and 4(2) Directive 2009/147/EC ('the Birds Directive') and Article 6 of Council Directive 93/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive'), as implemented by SI 477 of 2011 and in particular Article 26 thereof, (a) by failing, to have in place site specific conservation for the Inner Galway Special Protection Area, and (b) by failing to put in place the necessary conservation measures for the Inner Galway Special Protection Area.

4. A Declaration that the Second, Third and/or Fourth Respondents have failed to fulfil their obligations under Articles 4(4) and 6 of Council Directive 93/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive'), as implemented by SI 477 of 2011 and in particular Article 26 thereof, (a) by failing, to have in place site specific conservation for the Galway Bay Complex SAC, and (b) by failing to put in place the necessary conservation measures for the Inner Galway Complex SAC.

5. A Declaration that Section 50B of the Planning and Development Act 2000 as amended, and / or Sections 3 and 4 of the Environment (Miscellaneous Provisions) Act 2011 and/or that the interpretative obligation set out in Case C-470/16 North East Pylon Pressure Campaign Limited v. An Bord Pleanála whereby proceedings where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention apply to these proceedings.

6. Such further and/or other relief as this Honourable Court shall deem fit (including an interim orders and/or stays).

7. The costs of the within proceedings.”

Grounds of challenge

42. The core grounds of challenge are as follows:

“PART 1- CORE GROUNDS

(1) Domestic Law Grounds

1. The impugned decision of the First Named Respondent made on the 30th January 2025 LH07.320747 is invalid as it erred in deciding that the proposed development was in accordance with and/or would not materially contravene the Garraun Urban Framework Plan contained in Volume 2 of the Galway County Development Plan 2022-2028 including GUPP 10 and Policy objectives PM1, PM5, PMG, PM8, PM 13 and UL2 and Development Management Standards DM1 in the 2022-2028 plan and/or misinterpreted the Garraun Urban Framework Plan and/or failed to take into account relevant considerations and/or gave inadequate reasons (including for disagreeing with its inspector in breach of section 34(10)(b) of the 2000 Act as amended) in deciding that the proposed development was in accordance with the Garraun Urban Framework Plan

2. The impugned decision of the First Named Respondent is invalid as the Respondent failed to apply SPPR3 of the Sustainable Residential Development Compact Guidelines 2024 in breach of section 28(1C) and/or section 34(2)(aa) of the 2000 Act, in granting permission for development comprising 269 car parking spaces and/or failed to consider SPPR3 of the said Guidelines and/or failed to give adequate reasons relating to any purported consideration and/or application of SPPR 3.

3. The impugned decision of the First Named Respondent is invalid as it failed to give adequate reasons for disagreeing with its inspector and/or with submissions made by the public including the Applicant (and reasons for refusal by the planning authority) that the proposed development would endanger public safety by reason of traffic hazard and the Board further erred in finding that the proposed development was in accordance with the development plan when it is in material contravention of objectives ILUP1, WC1, WC3, GBW1 and DM standards 28 and 33 of the GCC development plan 2028-2028 and/or acted without jurisdiction in granting permission without justifying the same under section 37(2)(b) of the 2000 Act where the planning authority had found a material contravention.

4. The impugned decision of the First Named Respondent is invalid as it failed to give adequate reasons and/or take into account relevant considerations and/or acted in breach of section 15 of the Climate and Low Carbon Development Act 2015 as amended, in stating its decision was consistent with the Climate Action Plan 2024.

(2) EU Law Grounds

Validity of Decision

5. The impugned decision of the First Named Respondent is invalid as it failed to conduct a valid Appropriate Assessment of the proposed development in breach of Article 6(3) of the Habitats Directive and/or section 177V of the Planning and Development Act 2000 as amended by reason of the absence of conservation objectives and measures for the Inner Galway Special Protection Area and Inner Galway Complex SAC

Non-Transposition

6. The Second, Third and/or Fourth Respondents (a) failed to fulfil their obligations under Articles 3, 4(1) and 4(2) Directive 2009/147/EC (‘the Birds Directive’) and Article 6 of Council Directive 93/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (‘the Habitats Directive’), as implemented by SI 477 of 2011 and in particular Article 26 thereof, (a) by failing, to have in place site specific conservation for the Inner Galway Special Protection Area, and (b) by failing to put in place the necessary conservation measures for the Inner Galway Special Protection Area.

7. The Second, Third and/or Fourth Respondents have failed to fulfil their obligations under Articles 4(4) and 6 of Council Directive 93/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (‘the Habitats Directive’), as implemented by SI 477 of 2011 and in particular Article 26 thereof, (a) by failing, to have in place site specific conservation for the Galway Bay Complex SAC, and (b) by failing to put in place the necessary conservation measures for the Inner Galway Complex SAC”

The council decision

43. The council decision provides as follows (emphasis added):

“GALWAY COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS 2000-2010

DECISION under SECTION 34 of the ACT of 2000

Reference Number: 24/60733

Date of Receipt of Application: 17/06/2024
 Marshall Yards Development Company Ltd.
 Schalk van Heerden
 6 Joyce House
 Barrack Square
 Ballincollig
 P31YX97

I hereby give you NOTICE that the Galway County Council has by order dated 8th August 2024 decided to REFUSE PERMISSION

to the above named, for development of land, in accordance with documents lodged, namely for the following Large Scale Residential Development (LRD) comprising the demolition of the existing shed and associated structures on site and the construction of 171 no. residential units, 1 no. creche and all associated development works including the provision of pedestrian/cyclist facilities along the R338 public road connecting to Oranmore rail station, 1 no. ESB substation, 1 no. pumping station, the undergrounding of the existing ESB lines traversing the site, footpaths, lighting, parking, drainage, bicycle and bin stores and landscaping/amenity areas. Access will be via a new entrance on the L-71051 to the east. A Natura Impact Statement is submitted to the Planning Authority with this application. Gross floor space of proposed works: 14,919.80 sqm. Gross floor space of any demolition: 95.37 sqm in the townland of Cartron and Garraun South for the reasons set out in the Schedule hereto.

In deciding this Planning Application Galway County Council has, in accordance with section 34(3) of the Act, had regard to any submissions or observations received.

Main reasons and considerations on which the decision is based:-

The proposed development has been assessed, within the restrictions imposed by the principles of proper planning and sustainable development and having regard to the policy objectives of Galway County Council as set out in the 2022 – 2028 County Development Plan. Based on this assessment it is considered that the proposed development would be contrary to the proper planning policies as set out in the County Development Plan.

Signed this 8th day of AUGUST 2024 on behalf of Galway County Council

pp COUNTY SECRETARY

SEE ATTACHED SCHEDULE (REASON(S) 5)

Please see attached sheet for important Notice regarding Planning Appeals

...

1. Having regard to the information submitted with the planning application details, the submissions received, the proximity of the site to the Galway Bay Complex SAC and Inner Galway Bay SPA, the connectivity from the project site to the aforementioned European sites in conjunction with the deficiencies and lacunae identified in the NIS submitted as identified by the planning authority, including an incomplete assessment of the entire project site, the planning authority cannot be satisfied that the proposed development **will not have an adverse effect on the Galway Bay Complex SAC and Inner Galway Bay SPA**, in view of their conservation objectives, alone or in combination with other plans and projects. Therefore, if permitted as proposed, the development would materially contravene NHB1, NHB2 and NHB3 of the Galway County Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the subject site situated onto the R-338 Regional Road, a heavily trafficked arterial route, where the 80kph speed limit applies, it is considered that the proposed development would result in additional traffic turning movements being generated at a point, where the horizontal and vertical alignment of the public road is restricted and whereby the intensification of use and required visibility would constitute a significant intervention on a Regional /local road, **in contravention of Development Management Standards 28 and 33 and Policy Objectives NNR2 of the Galway County Development Plan 2022-2028**. Therefore, in relation to safeguarding the transport function of regional & local roads and associated regional & local road junctions, it is considered that the proposed development would interfere with safety and endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and therefore would be contrary to the proper planning and sustainable development of the area.

3. The planning authority have serious concerns regarding the capacity of the surrounding road network to accommodate the proposed development, taking account of:

- the vehicular dominated layout in conjunction with the lack of sustainable connectivity and quality of permeability measures evident;
- the suitability of the proposed external and internal traffic circulation regime;

- the potential for conflicting traffic movements, including rigid movements due to restricted and reversing vehicle [manoeuvrability] within and adjoining the site, which may negatively impact on road and pedestrian safety;

-the geometrical parameters evident with regard to the development road layout contrary to the desirable minimum DMURS standards, TII publications and Cycle Design Manual; and
-the absence of demonstrating compatible linkages with the proposed Strategic Greenway Network (preferred route of the Galway to Athlone Corridor);

Accordingly, to grant permission for the development as proposed would have an unacceptable impact on the sustainable movement and transportation of the area and **would materially contravene policy objectives ILUTP1, WC1, WC3, GBW1 and DM Standards 28 and 33 of the Galway County Development Plan 2022-2028** and therefore would be contrary to the proper planning and sustainable development of the area.

4. Having regard to the general design of the proposed layout including the lack of satisfactory urban design and placemaking considerations and the similarity in the design of a significant number of residential units, in conjunction with the absence of provision of connected green spaces/corridors within the scheme and deficiencies in the private open space provision for a number of units, it is considered that the proposal represents a substandard form of development that would also compromise the residential amenity of future occupants. Accordingly, to grant the proposed development **would contravene materially Policy Objectives PM 1, PM 5, PM 6, PM 8, PM 13 and UL 2 as well as Development Management Standards DM1 contained in the Galway County Development Plan 2022-2028**, would set an undesirable precedent for similar future development and would be contrary to the proper planning and sustainable development of the area.

5. The development proposal fails to satisfactorily take account of the wider Garraun Urban Framework Plan area, and does not satisfactorily demonstrate the vision, principles or objectives of the Urban Framework Plan, particularly in terms of sustainable connectivity, landscape and placemaking considerations. Therefore, if permitted as proposed the development **would be contrary to Policy Objective GUPF 10 of the Garraun Urban Framework Plan as set out under the Galway County Development Plan 2022-2028** and would therefore be contrary to the proper planning and sustainable development of the area."

The inspector's analysis

44. The inspector concluded as follows in relation to AA (emphasis added):

"15.8 NIS Assessment:

15.9 I have relied on the following guidance: Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, DoEHLG (2009); Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC, EC (2002); Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

15.10 The Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268) are subject to appropriate assessment. A description of the sites and their Conservation Objectives and Qualifying Interests are set out in the submitted NIS and have already been outlined in this report as part of my assessment. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website.

15.11 Aspects of the Development that could adversely affect the designated sites: The main aspects of the development that could impact the conservation objectives of the European sites are through habitat loss by deterioration of water quality by runoff from the site, through habitat loss/ alteration or degradation by invasive species and potential for visual and noise impacts on SCI Species. The subject site is within 5m of a designated site and therefore considerations of distance and dilution effect on any pollutants entering the surface water drainage system cannot be ruled out.

15.12 Mitigation: A range of mitigation measures are provided in the NIS, and these are noted. These refer to the construction and operational phases of the development as provided in the applicant's report. A range of measures including the introduction of a suitable SuDS plan will address potential surface water runoff issues. Careful control/ treatment of invasive species will be required during the construction phase and into the operational phase. The proximity of the site to designated sites rightly requires a degree of caution to be deployed throughout the construction and operational phases.

15.13 Overall, I consider that the proposed mitigation measures are clearly described, and precise, and definitive conclusions can be reached in terms of avoidance of adverse effects on the integrity of designated European sites based on the outlined mitigation measures. I

consider that the mitigation measures are necessary having regard to the proximity of the site to the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268). Overall, the measures proposed are effective, reflecting current best practice, and can be secured over the short and medium term and the method of implementation will be through a detailed management plan and appropriate monitoring through the construction and operational phases of the development.

15.14 In Combination Effects: No issues of concern are raised subject to the full implementation of mitigation measures outlined in the NIS.

15.15 Appropriate Assessment Conclusion:

15.16 The proposed residential development at Cartron, to the north of the Coast Road, Oranmore, Co. Galway has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

15.17 Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the site in light of its conservation objectives.

15.18 Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects **would not adversely affect the integrity of the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268) subject to the implantation in full of appropriate mitigation measures.**

15.19 This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and monitoring in relation to the Conservation Objectives of the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268).
- Detailed assessment of in combination effects with other plans and projects including historical projects, plans and current proposals.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268).

15.20 I have had full consideration of the information, assessment and conclusions contained within the NIS. I have also had full regard to National Guidance and the information available on the National Parks and Wildlife Service (NPWS) website in relation to the identified designated Natura 2000 sites. I have had full regard to the submitted report from the Department of Housing, Local Government and Heritage, and that of the Planning Authority. The applicant has revised their AA Screening and NIS in support of their first party appeal. I consider it reasonable to conclude that on the basis of the information submitted in the NIS report, including the recommended mitigation measures, and submitted in support of this application, that the proposed development, individually or in combination with other plans or projects would not be likely to adversely affect the integrity of the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268)."

45. It can be noted that by contrast with the council, the inspector had the benefit of additional information in the form of a revised NIS in coming to the foregoing conclusions.

46. He proposed refusal for the following reasons (emphasis added):

"1. The proposed development does not provide for a suitable high quality of urban design and fails to demonstrate that it has regard to the Garraun Urban Framework Plan forming part of Oranmore and provided for within Volume 2 of the Galway County Development Plan 2022 – 2028. The submitted layout plan does not provide for an east to west street, there is no north to south green spine and there is a lack of connectivity which **conflicts with this Urban Framework Plan.** The proposed development would, therefore, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.

2. The vehicular access to the site from the R338/ Coast Road is over a short section of minor road, which is seriously substandard in terms of width and alignment. In addition, the access to this road is adjacent to the proposed creche and associated set down area. The section of road from the junction with the R338/ Coast Road, including the area adjacent to the creche and which leads to the residential development will be heavily trafficked and will be prone to congestion at peak times. The traffic generated by the proposed development would therefore **endanger public safety by reason of traffic hazard and obstruction of road users.**

3. Vehicular traffic accessing this development will be from the R338/ Coast Road, within an area that an 80 kph speed limit applies. The applicant has not proposed any significant junction improvements here and in particular no right turn lane is provided for traffic coming from the east of the site. It is to be expected that there will be a significant volume of traffic from the east considering the location of Oranmore, its shops, schools and railway station. Vehicles accessing the site will cross over the potential route of a greenway, therefore giving rise to potential traffic conflict. Having regard to the scale of the proposed development and the traffic to be generated by it, it is considered that the additional traffic associated with this residential scheme would **endanger public safety by reason of traffic hazard and would lead to conflict between road users, that is, vehicular traffic, pedestrians and cyclists.**"

The impugned decision

47. The impugned decision provides as follows:

"Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

In coming to its decision, consistent with the Climate Action Plan 2024, the Board had regard to the following:

- (i) the provisions and policies of the Galway County Development Plan 2022 -2028,
- (ii) the zoning objective R – 'Residential Phase 1' with an objective 'To protect, provide and improve residential areas within the lifetime of this plan' of the development plan,
- (iii) the Galway County Development Plan 2022-2028, Garraun Urban Framework Plan,
- (iv) Housing for all issued by the Department of Housing, Local Government and Heritage, 2021, and Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- (v) the Sustainable Residential Development and Compact Settlements - Guidelines for Planning Authorities, issued by the Department of Housing, Local Government and Heritage, January 2024,
- (vi) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of Housing and Planning and Local Government, December 2023,
- (vii) the National Biodiversity Action Plan 2023,
- (viii) the pattern of existing and permitted development in the area,
- (ix) submissions and observations received, and
- (x) the Inspectors Report.

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the policies and objectives of the Galway County Development Plan 2022-2028, in particular the Garraun Urban Framework Plan (UFP), the Core Strategy and zoning objective. The proposed development would not materially contravene the current development plan for the area, would not constitute a traffic hazard by reason of significant additional traffic or traffic movements, would be in accordance with the Urban design principles of placemaking set out in the Urban Framework Plan and be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered the totality of the file. The Board agreed with the Inspectors conclusion that the environmental information submitted at appeal stage addressed the deficiencies in the Natura Impact Statement submitted to the planning authority and reason 1 of the planning authority's refusal. Therefore the Board were able to conclude an Appropriate Assessment stage 2.

The Board noted that the lands are zoned phase 1 residential in the Galway County Development Plan 2022-2028 and that Garraun is identified as a growth area, a Metropolitan Area Settlement in the Core Strategy. The development plan includes an Urban Framework Plan for the settlement of Garraun, this sets out the vision and form for the growth of the metropolitan area settlement.

The Board noted that this is an area in transition from green field to a new settlement with a clear plan for the area's development as set out in the UFP. The core of the area adjoins the railway station and the site the subject of this application is at the edge of the Plan area. It is subject to medium density growth, with pedestrian and cycle linkages to the railway station, future schools, the commercial core and lands to the north of the railway being via the Coast Road the R388 and the L7105.

The Urban Framework Plan, Section 6.3 and 6.4, Public Transport and Movement and Access set out how the nature of the Coast Road is to change to accommodate future growth,

providing for a local bus connection, and attractive routes for pedestrian and cyclists with a traffic management zone to assist in achieving this change in the role and function of the regional road. The plan states 'The Coast Road will serve the existing and new residential areas south of the railway, as well as the station carpark. As Garraun is developed, through traffic between Galway and Cranmore will be diverted via the N67/R446, making the Coast Road an attractive and safe coastal amenity and connection for pedestrians and cyclists.' (Section 6.4 Garr[a]un Urban Framework Plan). The Urban Framework Plan provides a phasing for the zoned land but does not link that phasing to the delivery of infrastructure. The Board did not consider the scheme as proposed contravened Policy ILUPT 1 of the Development Plan. The proposed development includes works to the public road, the works proposed include improved cycle and pedestrian access on the Coast Road improving access for sustainable modes to lands zoned for community uses and commercial core as well as the existing train station, and the application is accompanied by a letter of consent from Galway County Council to include the public road within the red line.

These works on the public road, while not integrated into the county cycle network that is yet to be finalised, do provide local access to lands zoned for services and facilities and to the train station. These works may be seen as interim works to improve the current situation until the longer-term strategic cycle network plan, that has been the subject of public consultation, is advanced. There is no evidence on file that the works proposed by the applicant to the public road would prejudice any future plans. The development as proposed therefore aligns with policy ILUPT 1 and GBW1 both promoting and facilitating walking and cycling.

On the matter of DM 28 and DM 33, the applicant has responded comprehensively to these in the appeal submission. Chapter 6 WC 3 relates to cycle parking in the public realm of towns and villages, this is addressed in the application with cycle parking being provided for the creche, regarding WC1 the applicant has detailed how the proposed development accords with DMURS.

The applicant has demonstrated that the proposed access is not a traffic hazard. The vehicular access to the site is positioned to align with the requirements of the Urban Framework Plan. This access point was always going to require traffic to turn off the Coast Road into the local road, the matter of delivering the traffic management zone on the coast road as indicated on the urban framework plan and the strategic cycle network is a matter for the local authority to deliver. The site is identified as a phase 1 residential site, to refuse permission on the basis that the wider infrastructure is not in situ, particularly where the developer is proposing to provide improved connectivity, would undermine the core strategy of the development plan. Therefore, the Board did not concur with reason 2 and 3 recommended by the Inspector or reason 2 and 3 of the planning authorities' reason for refusal. The Scheme as proposed does not contravene the policies in the development plan as referenced in the reasons for refusal and addressed above. The Board considered that the infrastructure proposed on the public road should be delivered with the first phase of the development and prior to any house being occupied; this could be dealt with by condition.

Addressing the Inspectors first recommended reason for refusal; the Board considers having regard to the details submitted both with the application and the appeal, the design and layout does not materially contravene the Garraun Urban Framework Plan, the applicant has provided an east west route albeit staggered for reasons to do with traffic calming. The broken line of trees that are identified as a green spine in the Urban Framework Plan (Section 7), the arborist drawings accompanying the application show that the trees have a limited life and no evidence to the contrary has been provided, the applicant has designed the scheme to retain the trees that merit retention. The landscape plan clearly shows the significant level of new planting proposed, this accords with the Urban Framework Plan. The Board noted the Inspectors concerns regarding internal pedestrian routes, the Board considered that on balance the applicants rationale set out in the architectural design statements and the connectivity provided through the open space areas create internal connections, in addition to the footpaths on the streets, and therefore the scheme was acceptable.

The Board considered the revisions at appeal to the house types was welcome. The Board did have concerns regarding the manner in which it is proposed to differentiate between the three-character areas, specifically the uniformity of the finishes proposed, notwithstanding the limited change in colours and materials. This requires further consideration and should be a matter for agreement with the planning authority by way of a compliance condition.

The Board noted the planning authorities' reasons for refusal included noncompliance with PM1, PM5, PM6, PM8, PM 13, UL 2 and GUPF 10. These policies relate to place making, sustainable travel, health and wellbeing, character and identity, public realm opportunities,

layout and design and compliance with the Urban Framework Plan. The matters relating to sustainable travel have been addressed above, and so far as this relates to health and wellbeing so has this. On the wider matter of urban design, placemaking, public realm, layout and design, and compliance with the parameters of the Urban Framework Plan for this site the Board considered that the design and layout align with the key features of the UFP, drawing contained in Section 7, except for the green spine with the reason for not retaining the totality of the green spine, the condition of the trees, being acceptable. The Board, therefore, did not concur with the planning authority.

The Board noted that both the Inspector and the planning authority considered the density proposed 39uph to accord with the site's designation for medium density development, and both accepted that the creche is appropriate in size to serve the future residents. The area of open space required is not prescriptive in the development plan, noting the landscape rationale submitted and the wider Urban Framework Plan context where significant public open space and areas for community facilities have been identified, the Board considered the spaces proposed are well integrated into the layout of the scheme. The housing mix is acceptable and the frontage to the coast road aligns with the schematic layout shown in Section 7 of the Urban Framework Plan.

Appropriate Assessment (AA) - Stage 1

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within an established town centre location and adequately serviced urban site, the Appropriate Assessment Screening Report submitted with the application, the Inspector's Report, and submissions on file.

In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, other than the Inner Galway Bay Special Protection Area (Site Code: 004031) and Galway Bay Complex Special Area of Conservation (Site Code: 000268) for which Appropriate Assessment is, therefore, required.

Appropriate Assessment - Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions including expert submissions received and carried out an appropriate assessment of the implications of the proposed development on Inner Galway Bay Special Protection Area (Site Code: 004031) and Galway Bay Complex Special Area of Conservation (Site Code: 000268) in view of the conservation objectives of these sites. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites in view of the conservation objectives of these sites.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

Environmental Impact Assessment (EIA)

The Board completed an Environmental Impact Assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations, 2001, as amended, identifies and describes adequately the effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development, which is substantially below the thresholds in respect of Paragraphs 10 (b) (i) and (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 as amended,

- (b) the existing use of the site and the pattern of development in the vicinity,
 - (c) the availability of public water and foul services to serve the proposed development,
 - (d) the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, and the content of the applicant's Environmental Impact Assessment Screening Report, and
 - (e) the measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Outline Construction Environmental Management Plan,
- it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and the submission of an Environmental Impact Assessment Report would not therefore be required.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the policies and objectives of the Galway County Development Plan 2022-2028, in particular the Garraun Urban Framework Plan, the Core Strategy and zoning objective for this site, and that the proposed development would not constitute a traffic hazard by reason of significant additional traffic or traffic movements, would accord with the Urban design principles of placemaking and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 4th day of September 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

3. Design details of all works on the R338 the Coast Road and L71051, including the shared pedestrian route as shown on landscape drawings, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All work shall be carried out at the developer's expense.

The agreed works shall be carried out as part of phase 1 of the development, and no house shall be occupied until the works have been completed to the written satisfaction of the planning authority.

Reason: In the interest of sustainable development.

4. Prior to commencement of development, the following shall be submitted for the written agreement of the planning authority:

(a) Details of the materials, colours and textures of all the external finishes, the proposed finishes submitted to the Board on appeal shall be revised so that the three-character areas proposed are distinctly different in finish to reinforce the character areas. The proposed finishes shall also be appropriate to their wider setting.

(b) Area to be taken in charge by the planning authority.

(c) The provision of EV charging points.

Reason: In the interest of visual amenity and to provide certainty.

5. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development (other than the works in condition number 3).

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

6. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interests of sustainable drainage.

7. Prior to the commencement of development, the developer shall enter into a connection agreement (s) with Uisce Eireann (Irish Water) to provide for a service connection(s) to the public water supply and wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

8. (a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in Design Manual for Urban Roads and Streets (DMURS).

(b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of all locations and materials to be used shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of amenity and of traffic and pedestrian safety.

9. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees within the drawing landscape plan. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

11. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

12. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1 :500 showing -

(i) Existing trees, hedgerows, stone walls, specifying which are proposed for retention as features of the site landscaping.

(ii) The measures to be put in place for the protection of these landscape features during the construction period.

(iii) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder.

(iv) Details of screen planting.

(v) Details of roadside/street planting.

(vi) Hard landscaping works, specifying surfacing materials, furniture, play equipment and finished levels.

(vii) Details of all boundary treatments.

(b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.

(c) A timescale for implementation including details of phasing.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

13. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the landscape scheme agreed with the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority or management company.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

14. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate, street signs, and house numbers,

shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

15. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

Reason: In the interest of environmental protection residential amenities, public health and safety and environmental protection.

16. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Friday inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

17. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of reducing waste and encouraging recycling.

18. The development hereby permitted shall be carried out and completed at least to the construction standards as set out in the planning authority's Taking In Charge Standards. In the absence of specific local standards, the standards as set out in the 'Recommendations for Site Development Works for Housing Areas' issued by the Department of the Environment and Local Government in November 1998. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.

19. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority [in relation to the transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

20. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual

purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

22. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission."

Procedures for material contravention

48. The wording of a development plan may include highly specific wording with a limited role for evaluation, or it may include very general language that creates a zone of evaluative judgement for the decision-taker, and generally speaking evaluative judgements not tainted by other procedural, legal or factual errors are reviewable on an unreasonableness standard: *Oxigen v. An Coimisiún Pleanála* [2025] IEHC 632 (Unreported, High Court, 19 November 2025), *Jennings v. An Bord Pleanála* [2023] IEHC 14 (Unreported, High Court, Holland J., 17 February 2023), *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, Woulfe J., 11 April 2024) (Charleton, O'Malley, Baker and Murray JJ. concurring), which is a critical authority on the issue of contravention of the development plan.

49. One initial point is that while *Sherwin* arose in the context of the strategic housing development (SHD) procedure, the *ratio* clearly relates to plan contraventions generally, based on the fact that it begins with a discussion of the importance of the development plan, citing authorities relating to regular planning process. That discussion would have been irrelevant and inappropriate if *Sherwin* was in some way limited to the issue of SHD-type restrictions on the power to contravene (such as s. 37(2)(b) of the 2000 Act). The *Sherwin* failure to engage with the plan is distinct from the situation in *Ryanair v. An Bord Pleanála* [2025] IEHC 74 (Unreported, High Court, 14 February 2025), where the board did in fact identify a contravention of the local area plan but where the discussion elided the concepts of materiality and justification, but not in a way that affected the substance of the decision. *Ryanair* ultimately is about the principle that a non-legally-significant taxonomic confusion is not fatal if the decision is robust in substance. That decision does not support a procedure where there is a much more basic failure to get to grips with the development plan provision being contravened in the first place.

50. *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, Woulfe J., 11 April 2024) (Charleton, O'Malley, Baker and Murray JJ. concurring) identifies a number of important points:

- (i) The **importance of the development plan** is well established: *Attorney General (McGarry) v. Sligo County Council* [1991] 1 I.R. 99, [1989] I.L.R.M. 768 (Walsh J.) (Hederman and McCarthy JJ. concurring); *Byrne v. Fingal County Council* [2001] IEHC 141, [2001] 4 I.R. 565 (McKechnie J.) (*Sherwin* paras. 90-92).
- (ii) "It is well established that **the interpretation of a development plan is ultimately a matter for the courts**. Any misinterpretation of the development plan by the relevant planning authority is an error of law which goes to jurisdiction. It is also well established that the development plan is not to be treated as if it were a piece of primary or secondary legislation emanating from skilled draughtsmen, and inviting the exceptive canons of construction applicable to such material. Instead, a development plan falls to be construed in its ordinary meaning as it would be understood by members of the public without legal training, as well as by developers and their agents, unless the document, read as a whole, necessarily indicates some other meaning" (*Sherwin* para. 96, emphasis added).
- (iii) As regards what is a contravention, "Certain aspects of the plan may have a high level of specificity. In those cases, it may not be at all difficult to determine whether what is proposed is in contravention of the plan, and it would only remain to exercise a judgment as to the materiality of any such contravention. However, at the other end of the spectrum, it is not uncommon to find objectives in a development plan which may, to a greater or lesser extent, be properly described as aspirational. Such objectives may be expressed in general terms. In such cases, a much greater degree of judgment may need to be exercised as to whether the development proposed amounts to a material contravention of the development plan." (*Sherwin* para. 95 citing *Maye v. Sligo Borough Council* [2007] IEHC 146, [2007] 4 I.R. 678 (Clarke J.) – the discussion also relies on *Jennings v. An Bord Pleanála* [2023] IEHC 14 (Unreported, High Court, Holland J., 17 February 2023)).
- (iv) "the first question must be the nature of the determination (if any) actually made by the decision-maker, **as to whether or not the proposed application as a matter of law and fact would materially contravene the development plan**', (per Costello J. in [*South-West Regional Shopping Centre Promotion Association Limited v. An Bord Pleanála* [2016] IEHC 84]), in circumstances where there has been **the required focus by the decision-maker on the specific provision of the plan allegedly materially contravened**. In my opinion that question is **the crucial starting point**, before one gets to the questions as to the standard of review by the court." (*Sherwin* para. 105, emphasis added). See also *Wilson v. An Bord Pleanála* [2025] IEHC 523 (Unreported, High Court, 3 October 2025) per Farrell J.
- (v) Thus where "the details of this planning application, and the materials before the Inspector and the Board, clearly required a focus by the Board on [a specified] policy" (*Sherwin* para. 106), this has the consequence that, even if the material was "not expressly alleging a material contravention of the development plan in terms" (*Sherwin* para. 107), the position is that "[i]n the circumstances **it [is] incumbent on the Inspector to make a determination as to whether or not the proposed development, as a matter of law and fact, would materially contravene [the specified] policy**" (*Sherwin* para. 108, emphasis added).
- (vi) "the first step in making the required determination was for the Inspector to **consider the text of [the] policy ...** and to interpret that text to some degree, in terms of what she understood it to mean. In many cases the interpretation of such a provision may be clear and even self-evident, but in other cases there may be some lack of clarity requiring some level of engagement with the text." (*Sherwin* para. 109, emphasis added). "**it was necessary for the Inspector to give some indication as to her understanding of what the test meant, before she moved on to her application of that test**, as so interpreted, to the facts of this planning application." (*Sherwin* para. 110, emphasis added).
- (vii) **These requirements are not discharged merely by a planning assessment that permission should – or indeed should not - be granted**. Thus in *Sherwin*, "opinion as to Block D1 comfortably sitting side by side with existing protected structures, without detriment to their character, cannot be viewed as an implicit or indirect assessment of compliance with policy CHC2. It appears from the sentences which followed this opinion that the opinion is essentially based on one consideration, that structures from different periods can co-exist within the same land parcel etc, rather than based on the considerations expressly stipulated in policy CHC2." (para. 114).

51. We can note also that the test for materiality of a contravention centres on the grounds upon which a proposed development is being or might reasonably be expected to be opposed by local interests (*Roughan v. Clare County Council* (Unreported, High Court, Barron J., 18 December 1996) as cited in *Jennings v. An Bord Pleanála* [2023] IEHC 14 (Unreported, High Court, Holland J., 17 February 2023)).

52. “The decision of the Commission in determining a *de novo* appeal, pursuant to s. 37 of the 2000 Act, must be made by reference to the development plan then in force, as per the recent decision of this Court in *Crofton [Buildings Management CLG v. An Bord Pleanála* [2024] IESC 21]. This is the case irrespective of whether the Commission is determining an appeal on a first occasion before any possible judicial review, or alternatively on remittal after a decision of the Commission has been quashed.” *Milbourne Residents Association v. An Bord Pleanála* [2025] IESC 50 (Unreported, Supreme Court, Woulfe J., 27 November 2025) at 76 (Charleton, Hogan, Murray and Donnelly JJ concurring). Hence it follows that the fact that the planning authority decision was in respect of a previous development plan does not preclude the commission from dealing with the appeal.

53. In regular planning, there is an elaborate procedure for a council to grant permission in material contravention, under s. 34(6) of the 2000 Act:

“(6) (a) In a case in which the development concerned would contravene materially the development plan or local area plan, a planning authority may, notwithstanding any other provision of this Act, decide to grant permission under this section, provided that the following requirements are complied with before the decision is made, namely—

(i) notice in the prescribed form of the intention of the planning authority to consider deciding to grant the permission shall be published in at least one daily newspaper circulating in its area and the notice shall specifically state which objective of the development plan or local area plan, as the case may be, would be materially contravened by granting this permission,

(ii) copies of the notice shall be given to each of the following—

(I) the applicant,

(IA) the regional assembly for the area in which the planning authority is situated,

(II) a prescribed body which has been notified of the application by the planning authority, and

(III) any person who has made a submission or observation in writing in relation to the development to which the application relates,

(iii) any submission or observation as regards the making of a decision to grant permission and which is received by the planning authority not later than 4 weeks after the first publication of the notice shall be duly considered by the authority

(iiia) not later than 6 weeks from the publication of the notice under subparagraph (i), the chief executive shall prepare a report for the members of the planning authority—

(I) stating the main reasons and considerations on which the proposal to grant permission is based,

(II) summarising the issues raised in any submissions or observations in accordance with subparagraph (iii), and

(III) advising the members of his or her opinion regarding the compliance or otherwise of the proposed development with any relevant Ministerial guidelines under section 28 or any relevant policies or objectives of the Government or Minister of the Government or with any regional spatial and economic strategy,

and the report shall be considered by the members before a resolution is passed under subparagraph (iv), and

(iv) a resolution shall be passed by the planning authority approving the proposal of the chief executive to grant permission.

(b) It shall be necessary for the passing of a resolution referred to in paragraph (a) that the number of the members of the planning authority voting in favour of the resolution is not less than three-quarters of the total number of the members of the planning authority or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient, and the requirement of this paragraph is in addition to and not in substitution for any other requirement applying in relation to such a resolution.

(ba) Where a resolution referred to in paragraph (a) has been passed by a planning authority in accordance with paragraph (b), the planning authority shall—

(i) send to the regional assembly for the area and the Office of the Planning Regulator a copy of the notice under paragraph (a) that relates to the resolution, and

(ii) at the same time, inform the regional assembly for the area and the Office of the Planning Regulator in writing that the resolution was passed.”

54. The commission can also do so, although the procedures are not quite so elaborate, under s. 37(2):

“(2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.”

55. The procedures under s. 37(2)(b) only apply if:

(i) the council has refused permission on grounds of material contravention; and

(ii) the commission decides to grant permission notwithstanding the material contravention.

56. These procedures do not apply if the commission lawfully decides that a grant of permission would not amount to a material contravention. That is implicit in para. (a) and in the reference back to para. (a) contained in para. (b). Nor does it apply where the inspector thinks that there is a material contravention but the commission disagrees.

57. That does not mean that a finding of non-material-contravention is immune from scrutiny, still less that a failure to address the issues is so immune. *Sherwin* points the way to the necessary pathway for consideration of issues generally, essentially:

(i) engage with the relevant text of the plan and interpret it to the extent necessary;

(ii) come to a reasoned view on contravention;

(iii) come to a reasoned view on materiality if there is a contravention; and

(iv) consider whether permission should be granted notwithstanding material contravention, by reference to the applicable statutory procedure for that if there is one.

58. Reasonable people could disagree about whether the legislation should be more (or less) demanding of the commission. That said, the administrative law of reasons is there to fill some of the gaps because where a decision-taker is disagreeing with another institutional actor, that creates objectively a main issue that requires main reasons.

59. Another distinction of relevance is that the more elaborate procedures for material contravention do not apply to a local area plan: *Ryanair v. An Bord Pleanála* [2025] IEHC 74 (Unreported, High Court, 14 February 2025).

60. However, where a plan for a particular locality is incorporated into a development plan, it necessarily has plan-level status.

61. Operationalising the steps set out in *Sherwin*, there are in essence four logical steps to the analysis (subject to contrary provision in the particular legislative context):

(i) engagement with the text of the plan alleged to have been contravened and interpretation of the text where appropriate;

(ii) making a reasoned determination as to whether there is a contravention;

(iii) if so, making a reasoned determination as to whether it is material; and

(iv) if so, consideration of justification of the contravention through the lens of the statutory conditions for the grant of permission notwithstanding any material contravention, notably s. 37(2) of the 2000 Act where it applies.

62. These requirements are not satisfied by a statement that permission should be granted. By necessary implication they cannot be satisfied either by a bald conclusion that the permission does not materially contravene the plan. That is not to suggest any rigid formula for the wording of decisions (for example, issues (ii) and (iii) could be dealt with together although in practical terms there may be something to be said for dealing with issues in a methodical and granular way as set out above).

Preliminary objections including whether the points were made at the appropriate time

63. The notice party submitted as follows:

“II. Preliminary Objections

10. Marshall has raised a number of preliminary objections in its Statement of Opposition (§19-28 of Marshall’s Statement of Opposition). Additionally, the manner in which the Applicant has advanced its written submissions gives rise to further objections, which are summarised below:

(i) The Applicant consistently misrepresents the contents of the Commission Order and, in particular, the development in respect of which planning permission was granted as being a grant of planning permission for a 171-unit development with 269 car parking spaces. The Commission Order grants planning permission for a 170-unit development with 266 car parking spaces, namely the revised development proposal contained in the plans and particulars lodged with the First Party Appeal. This is entirely clear from the First-Party Appeal, the Inspector’s Report, and the Commission Order. Furthermore, it is clear that the Applicant, at all material times, understood that the First Party Appeal related to a reduced development (See §1.2 of the Applicant’s own submission to the Commission dated 30 September 2024).

(ii) The Applicant has responded to this issue in his submissions by calling into question whether the Architectural Design Statement of Mr Flemming was before the Commission (§1 of the Applicant’s Submissions). This submission is not understood, as that document is exhibited at Tab 2 of Exhibit BL1. It appears to be the Applicant’s case that because it was not contained in Tab 1 of Exhibit BL1, there is a question mark over whether it was before the Commission. This concern is easily resolved for two fundamental reasons: (1) the document is stamped as received by the Commission, and (2) the Applicant’s own submission to the Commission referred to the reduced car parking. Further, the Inspector’s report expressly calls out that there has been a reduction in units (see: §8.3.2, §8.5.12, §8.6.10, §9.2, §12.2, §14.1 and Appendix 3 of the Inspector’s Report). Therefore, it is without question that the Commission granted permission for a 170-unit development with 266 car parking spaces.

(iii) The Applicant also tries to say that there is some confusion over visitor car parking spaces, but this isn’t correct either. The total amount of car parking is 266 spaces, and this is broken down on page 7 of the Architectural Design Statement as follows:

Car Parking	No. of Spaces
Maisonettes (on street parking)	16
2, 3 and 4 beds (in-curtilage parking)	236
Visitor spaces	7
Creche (of which 1 is accessible)	7

Total 266

(iv) In that regard, it is difficult to understand the approach of the Applicant in these proceedings. He made submissions during the planning process, which demonstrated that he understood that revisions had been made to the development as part of the appeal to the Commission. However, the case as pleaded in the Statement of Grounds demonstrates that he has misunderstood the decision made by the Commission. Even though this has been pointed out to him, he appears not to accept that he has misunderstood the terms of the grant of planning permission. This inconsistent and unclear approach of the Applicant ought to be considered, if necessary, in the context of any exercise of discretion by this Honourable Court.

(v) All of the grounds of challenge advanced in the Statement of Grounds, are matters which are raised for the first time in these proceedings and are not matters upon which the Applicant made submissions to the Council and / or the Commission, and no explanation has been provided for why such issues were not raised before the Council and/or the Commission. In such circumstances, the Applicant is precluded from challenging the decision of the Commission by reference to matters not previously raised as part of the public consultation process. Further, and/or in the alternative, in these circumstances, if this Honourable Court determines that any of the grounds of challenge should be upheld, it should exercise its discretion to refuse the relief sought (see, for example, Friends of the

Irish Environment CLG v. Government of Ireland [2021] IECA 317 at §277, Friends of the Irish Environment CLG v. An [Coimisiún] Pleanála [2026] IEHC 205 §§44 – 57 and Liffeyfield Limited v. An Coimisiún Pleanála [2026] IEHC 186 §§49 – 71). This issue is addressed in greater detail in respect of the consideration of each Core Ground.

(vi) Marshall takes objection to the repeated assertions of merit-based complaints and assertions which are impermissibly advanced in the Statement of Grounds, and which are not substantiated by any expert evidence. Where such issues arise, it is specifically addressed in the particulars of opposition pleaded by Marshall below.

(vii) The application for Judicial Review (related to Core Grounds 1-4) proceeds on the basis that the Commission granted planning permission for a development which includes too many car parking spaces. However, it is apparent from the submissions made to the Council and the Commission on behalf of the Applicant (reflected at §37 of the Grounding Affidavit) that the position adopted by him in the planning process was, in fact, to the opposite effect and raised concerns as to a lack of parking provision for the creche (which comprises part of the Proposed Development) and that the parking fell below the requirements of the Development Plan. In other words, the Applicant objected to the grant of planning permission for the proposed development on the basis that it included too few car parking spaces. Furthermore, and contrary to what is now advanced in respect of Core Ground 2, the Applicant's submissions to the Council acknowledge that while provisions existed to reduce parking if a development is adjacent to a high-frequency bus route, that same did not apply here (also reflected at §37 of the Grounding Affidavit).

(viii) The Applicant is not entitled to make submissions before a decision-maker by which he objects to the proposed development on the basis of insufficient car parking and then, subsequently, in judicial review proceedings, maintain that the decision-maker granted permission for too many car parking spaces. Similarly, the Applicant is not entitled to make submissions before a decision-maker in relation to the inapplicability of provisions to reduce car parking and then, in these proceedings, advance the case that such provisions do apply. Therefore, the Applicant does not have standing to pursue such complaints in these proceedings and/or in the alternative, the Court ought, in the exercise of its discretion, refuse to grant the relief sought by the Applicant, having regard to the nature of the position adopted by the Applicant in the planning process and the contrary position adopted by him in these proceedings. The making of submission which are inconsistent with pleaded points disqualifies an applicant in terms of obtaining certiorari (AAI Baneshane v An Coimisiún Pleanála [2025] IEHC 641 at §53(iii) and §123(v)).

(ix) The Applicant has also raised issues in these proceedings regarding technical matters which in effect, plead a failure of expertise on the part of the Commission without providing any expert evidence to this Court to controvert the findings made by the Commission and its Inspector. In that regard, the Applicant has failed to discharge the burden of proof and is not entitled to any relief (see Reilly at §69).

(x) In respect of Core Grounds 5-7, the Applicant has failed to positively disclose all facts relevant to the application and has failed to refer to the 'Conservation Objective Series' prepared by the NPWS in respect of each of the relevant European sites referred to in those grounds of challenge. Noting the obligations arising from Order 103 RSC as regards pleadings and the disclosure of relevant facts, Core Grounds 5- 7 ought to be dismissed in limine and /or the Court ought, in the exercise of its discretion, refuse to grant the relief sought by the Applicant.

(xi) Finally, the Applicant has delivered written submissions 21 April 2026, but those submissions do not readily engage with the pleaded case of the Applicant in respect of Core Grounds 5-7, and he impermissibly seeks to extend the pleaded grounds of challenge. The extent to which the Applicant addresses matters in his written submissions which do not form part of the pleaded case is significant, and it is well-established that the Applicant is not entitled to expand his case by way of written submissions: see, by way of example, 100 Meters Tall Group v. An Bord Pleanála [2025] IEHC 42, at §38. As the Applicant has no entitlement to maintain grounds of challenge in respect of which he was not granted leave, these submissions directly correspond to the pleaded case made by the Applicant."

64. For reasons which will become apparent it is not necessary to decide on these objections, save as to whether relief should be refused by reason of the alleged omission of the material contravention of the drawing at the GUPF section 7.0 from the applicant's submissions. I deal with this below.

65. The State submitted as follows:

"PRELIMINARY OBJECTIONS

Errors in Pleading

5. The State Respondents have identified by way of preliminary objections a number of errors in the Applicant's pleadings in the Statement of Grounds as set out at paragraphs 8 to 11 of the Statement of Opposition.

6. The Applicant has omitted wording from the declaratory reliefs sought and Core Grounds 6 and 7 and it is presumed that the Applicant intended to include the word 'objectives' and that the Grounds should read '...(a) by failing, to have in place site specific conservation [objectives]...'.
 7. Further the Applicant claims that there is an absence of site-specific conservation objectives and conservation measures for the 'Inner Galway Special Protection Area' and 'Inner Galway Complex SAC', where neither 'Inner Galway Special Protection Area' nor 'Inner Galway Complex SAC' exists, this is denied and the Applicant is not entitled to the reliefs as sought.

8. Without prejudice to the foregoing, the State Respondents have assumed that the Relief sought at D3 and Core Ground 6 is supposed to be a reference to the Inner Galway Bay SPA (Site Code 004031) and that the Relief sought at D4 and Core Ground 7 is supposed to be a reference to Galway Bay Complex SAC (Site Code 000268) and the Statement of Opposition was pleaded on that basis.

9. As set out at paragraph 11 of the Statement of Opposition, although Core Grounds 6 and 7 are pleaded under the heading 'Non-Transposition', the State Respondents note that Core Grounds 6 and 7 as pleaded, and paragraphs 49 of the Statement of Grounds have not in fact alleged any failure to properly transpose the Birds Directive or the Habitats Directive. The requirements of the Birds Directive and the Habitats Directive have been fully transposed into Irish law by SI No. 477 of 2011, the European Communities (Birds and Natural Habitats) Regulations 2011, as amended (the '2011 Regulations') and by Part XAB of the Planning and Development Act, 2000, as amended and more recently by Part 6 of the Planning and Development Act 2024 (not yet commenced) for decisions under that Act. There are no particulars alleging a failure to properly transpose Articles 3 and 4 of the Birds Directive or Articles 4 and 6 of the Habitats Directive into national law or any challenge to the validity of a statutory provision. It is therefore submitted that the Applicant is not entitled to any relief in respect of any alleged non-transposition which is denied.

Insufficient Particulars / Submissions

10. As set out at paragraph 4 of the Statement of Opposition, the State Respondents have raised a preliminary objection that the grounds pleaded as against the State Respondents at Core Grounds 6 and 7 are not pleaded with sufficient particularity as required by Order 84, rule 20(3) and Order 103, Rule 14 of the Rules of the Superior Courts, and ought to be refused on that ground alone. The Applicant has merely advanced one single paragraph at paragraph 49 of the Statement of Grounds:

49. The Second, Third and Fourth Named Respondents have acted in breach of the Birds and Habitats Directive in failing to provide for site specific conservation objective and site specific conservation measures for the Inner Galway Special Protection Area and Inner Galway Complex SAC.

11. Similarly to what Humphreys J described in *Wild Ireland Defence CLG v An Coimisiún Pleanála & Ors* [2025] IEHC 726 at §116, the sub-grounds for Core Grounds 6 and 7 are 'threadbare' to say the least.

12. The Applicant's written legal submissions have not set out any authorities relied upon to support Core Grounds 6 and 7 or to demonstrate any entitlement to the declaratory reliefs sought at D3 and D4. The height of the submissions advanced by the Applicant is one paragraph at paragraph 67 of the written submission:

'CORE GROUND 6 AND 7

67. The Applicants also seek relief against the State Respondents concerning both the absence of SSCO (both those admitted and also the vague objectives are not adequate to be SSCO) and also the absence of adequate conservation measures.'

13. It is submitted that the Applicant is not entitled to the relief sought having regard to the paucity of the unparticularised pleadings and the submissions put forward by the Applicant.

Confined to the Pleadings

14. It is submitted that it is settled law that the Applicant is also confined to the four corners of their pleadings and to the case as pleaded as against the State Respondents. The pleading requirements in judicial review proceedings are 'stringent' (See *Wild Ireland Defence CLG v An Coimisiún Pleanála & Ors* [2025] IEHC 726 at §58(i) and(ii) and also *McGowan v An [Coimisiún] Pleanála* [2025] IEHC 405 at §51 and the case law referred to therein). Having regard to those settled principles of pleading, it is submitted that the Applicant is not now permitted to advance any unpleaded case in respect of site specific

conservation objectives or conservations measures in either Core Grounds 6 and 7 or in Core Ground 5 in so far as it relates to the case as against the State Respondents.

15. The case as pleaded is an alleged failure to have in place any site specific conservation objectives or conservation measures for Inner Galway Bay SPA (Site Code 004031) or Galway Bay Complex SAC (Site Code 000268). The pleaded allegation, and the case the State Respondents had to meet, was an alleged absence or no site specific conservation objectives or conservation measures at all. The Applicant has sought to impermissibly expand its case in the written legal submissions to now mount a new allegation that rather than an alleged absence of SSCOs that 'the vague objectives are not adequate to be SSCO'.

16. The pleadings are important here and as stated by Humphreys J at §77 of Rural Residents Wind Aware and Environmental Group and Ors -v- An Coimisiún Pleanála and Ors [II] [No. 2] [2026] IEHC 136 - 'We need to keep the pleaded case firmly in mind'. The only allegation to answer is whether there is an 'absence' of site specific conservation objectives and conservation measures for Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268). It is submitted that the pleaded case has in fact been entirely answered by the State Respondents.

17. The Applicant has no pleaded case impugning the validity of the SSCOs or the adequacy of the conservation measures in place for Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268) and is not now permitted to advance such a case in written submissions where that has not been previously pleaded.

18. Similarly in respect of Core Ground 5, the State Respondents endorse paragraph 93 of the Commission's submissions which highlights that the Applicant's submissions now 'maintain a variety of complaints which simply were not pleaded':

- SSCOs for qualifying interests (in particular for the Inner Galway Bay SPA) are vague and insufficiently precise to amount to conservation objectives, as they are not defined by reference to sufficiently precise measurable targets of quantitative nor even sufficiently precise qualitative standard to be amount to adequate conservation objectives.
- inadequate surveys for black headed gulls.
- not appropriate to interpret the scope of protection of qualifying interests as being only within portions of the SAC but extends to the entire SAC (and indeed outside its boundaries in certain instances).
- no full consideration of all Annex I and Annex II species and no consideration of migratory birds in that context.

19. The Second Affidavit of the Applicant sworn on 12 March 2026 has similarly impermissibly sought to expand the pleaded case and further consists of mere assertions by the Applicant himself seeking to impugn the SSCOs and conservation measures and is not supported by any admissible expert or other evidence. Without prejudice to the primary submission that the adequacy of the SSCOs or conservation measures does not arise from the pleaded case, the onus of proof of any alleged inadequacy of the SSCOs or conservation measures cannot be discharged by mere assertion and cannot be discharged by non-expert opinion of the Applicant (See Joyce Kemper v An Bord Pleanála [2020] IEHC 601 §9; Murphy v An Bord Pleanála [2024] IEHC 59; Massey v An Bord Pleanála (No. 2) [2025] IEHC 206). Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268).

20. Contrary to the erroneous assertion in the pleaded case that there is an absence of SSCOs and conservation measures, the Statement of Opposition and Affidavits of Deirdre Lynn and Sarah Uí Bhroin have set out the SSCOs and conservation measures for Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268). The State Respondents rely on the relevant paragraphs of the Statement of Opposition and the Affidavits for the purpose of the within written submissions and do not intend to repeat those paragraphs herein.

21. It is submitted that at the time of the decision the subject matter of the within proceedings site-specific conservation objectives were established for all of the qualifying interests in the Inner Galway Bay SPA, except for the Black-throated diver. It is denied that there is any other legal flaw with the site-specific conservation objectives established for the Inner Galway Bay SPA. The Applicant's general allegation of an absence of SSCOs for the Inner Galway Bay SPA is denied, indeed, the Applicant did not even make reference to the Black-throated diver in its pleadings. Further, it ought not be acceptable for an Applicant to plead this aspect of the case at the level of generality done without making any reference whatsoever to the nature and contents of the SSCO in place and not making the case out with any degree of specificity beyond general allegation.

22. It is submitted that at the time of the decision the subject matter of the within proceedings site-specific conservation objectives were established for all of the qualifying interests in the Galway Bay Complex SAC, except for '1230 Vegetated sea cliffs of the Atlantic and Baltic coasts' or the '8240 Limestone Pavements'. It is denied that there is any other legal flaw with the site-specific conservation objectives established for the Galway Bay Complex SAC. The Applicant's general allegations of an absence of SSCOs for Galway Bay Complex SAC are denied and, indeed, the Applicant did not even make reference to the Vegetated sea cliffs of the Atlantic and Baltic coasts or the Limestone Pavements in its pleadings.

23. The Applicant's case pleads both that there has been a failure 'to provide' for site specific conservation measures for the Inner Galway Bay SPA and Galway Bay Complex SAC and that the 'necessary conservation measures' have not been put in place. The plea that there are 'no' conservation measures has been replied to in fact there are as set out in the Statement of Opposition and Affidavit of Sarah Uí Bhroin. At no point does the Applicant plead what the necessary conservations measures are, nor at any point does the Applicant advance any pleaded case at all as to what defects there are in the conservation measures already in place nor does the Applicant make any attempt at all to actually legally assail the position in fact, but simply and generically alleges that nothing is in place. It is submitted that there is therefore no 'absence' of conservation measures as alleged by the Applicant.

24. The Applicant has not established that the conservation measures identified are inadequate or insufficient in relation to the conservation requirements of the species. The Applicant has not particularised or advanced submissions supported by evidence in respect of any alleged inadequacy of the conservation measures in place and has not met the threshold or burden of establishing that the conservation measures in place are inadequate so as to entitle the Applicant to the relief sought in respect of conservation measures. It is submitted however that the fact of the adoption of conservation measures for the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268) has answered the Applicant's pleaded case entirely.

25. The Applicant has not referred to any authority in the written submissions relied upon under Core Grounds 6 and 7 for impugning the conservation measures in place or to support any contention that there has been a failure by the State Respondents in respect of obligations under EU law to establish conservation measures.

26. In Case C-444/21 Commission v Ireland ECLI:EU:C:2023:524 the CJEU also held that for the sites in which Ireland contended that conservation measures had been adopted that the Commission had not established that the conservation measures did not correspond to the conservation objectives subsequently established or had not established that the conservation measures did not meet the requirements of Article 6(1).

'161 In the present case, as regards the 44 sites which it considers to have had a complete set of conservation measures, the Commission has not shown that the specific conservation measures adopted by Ireland did not correspond to conservation objectives defined after the adoption of those measures.

162 In those circumstances, it must be held that the mere fact that conservation measures were adopted for the sites of Community importance at issue before the conservation objectives had been defined does not constitute an infringement of Article 6(1) of the Habitats Directive, with the result that the Commission has not established, for the 44 sites concerned, that the conservation measures adopted did not meet the requirements of that provision.'

27. It is submitted that similar to Commission v Ireland, the Applicant has not established that the conservation measures in place are inadequate or have not met the requirements for the sites. In Wild Ireland Defence CLG v An Coimisiún Pleanála & Ors [2025] IEHC 726 at §118, Humphreys J noted that the Applicant 'just baldly pleads that there are no measures' and in circumstances where an affidavit is sworn on behalf of the State Respondents to set out the conservation measures, the onus falls on the Applicant to displace that. The Court concluded at §160(viii) in Wild Ireland Defence that the Applicant had failed to discharge the evidential onus to show anything unlawful about the conservation measures. Therefore, it is submitted that the Applicant is not entitled to any relief as sought in respect of the alleged failure to establish conservation measures for the Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268).

28. It is submitted that the Applicant is not entitled to the general declarations as sought in the Statement of Grounds as site-specific conservation objectives were established for the other qualifying interests at the time of the impugned decision and the necessary conservation measures were established. Further, it is not accepted that declaratory relief

is required, nor is it accepted that the Applicant would be entitled to costs in this respect, given the manner of the pleadings and the detail of the allegations made.”

66. For reasons that will become apparent it is not necessary to deal with this in detail. In general I agree with the State that it would be inappropriate to grant declaratory relief in relation to highly specific transposition issues when these were not pleaded expressly, so I will not do so. In *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024), *per* Murray J. (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring), the Supreme Court emphasised that complex EU law arguments need to be articulated on the pleadings with particular clarity.

67. More generally, the parties' positions on whether the applicant's points were made at the appropriate time as recorded in the statement of case are summarised as follows:

“(i) points contended to be referenced in submissions/affidavits/ statement of case/ otherwise in the proceedings (excluding pleadings) but not made in the process and not pleaded;

Commission's Position

35. In its written submissions, the Applicant introduces a number of new matters into the proceedings which were not pleaded in the Applicant's Statement of Grounds, nor were they made as part of the process before the Commission. In particular, the Applicant advances an entirely new argument (Applicant's written submissions at §26-§40, §42, and §44-§45) about the location of the Proposed Development, which is categorised as a 'High Capacity Public Transport Node or Interchange', for the purposes of advancing an argument that the Proposed Development is within the scope of SPPR 3 based on being at an accessible location (it is not).

36. The Commission's Inspector recommended refusing permission to the Proposed Development for two stated reasons as they relate to road and/or traffic safety (Reasons No. 2 and No.3). The Applicant introduces a new point to the effect that the two reasons actually comprise seven sub-reasons which the Commission was required to individually address in disagreeing with the recommendation of its Inspector (Applicant's written submissions at §48-§50). These 'seven reasons' were not pleaded in the Statement of Grounds.

37. Following the decision of the Supreme Court in *Coolglass Wind Farm Limited v An Coimisiún Pleanála* [2026] IESC 5, the Applicant introduces a number of new points (Applicant's written submissions at §57-§58) in an attempt to distinguish the facts herein from the decision in *Coolglass*. This is a significant departure from the limited plea in the Statement of Grounds that there was a failure to have regard to the Climate Action Plan 2024.

38. Finally, at Core Ground 5 the Applicant expands on the case pleaded in the Statement of Grounds beyond recognition (Applicant's written submissions at §59-§66). The Applicant's submissions now maintain a variety of complaints which simply were not pleaded and cannot be maintained, namely:

- o SSCOs for qualifying interests (in particular for the Inner Galway Bay SPA) are vague and insufficiently precise to amount to conservation objectives, as they are not defined by reference to sufficiently precise measurable targets. of quantitative nor even sufficiently precise. qualitative standard to be amount to adequate conservation objectives.

- o Inadequate surveys for black headed gulls.

- o Not appropriate to interpret the scope of protection of qualifying interests as being only within portions of the SAC but extends to the entire SAC (and indeed outside its boundaries in certain instances).

- o No full consideration of all Annex I and Annex II species and no consideration of migratory birds in that context

State's Position

39. In respect of Core Grounds 5, 6 and 7. The Applicant is not permitted to advance any unpleaded case in respect of Site Specific Conservation Objectives or Conservation Measures by way of written submissions or the Statement of Case. The case as pleaded is an alleged failure to have in place any site specific conservation objectives or conservation measures for Inner Galway Bay SPA or Galway Bay Complex SAC. The pleaded allegation, and the case the State Respondents had to meet, was an alleged absence or no site specific conservation objectives or conservation measures at all. The Applicant has sought to impermissibly expand its case in the written legal submissions and Statement of Case to now mount a new allegation that rather than an alleged absence of SSCOs that 'the vague objectives are not adequate to be SSCO'. The Applicant further seeks to now advance an unpleaded case that 'purported site-specific conservation objectives for of the qualifying interests (in particular for the Inner Galway Bay SPA) are vague and insufficiently precise to

amount to conservation objectives. There are not defined by reference to sufficiently precise measurable targets. of quantitative nor even sufficiently precise. qualitative standard to be amount to adequate or valid conservation objectives'. The Applicant has no pleaded case impugning the validity of the SSCOs or the adequacy of the conservation measures in place.
Notice Party's Position

40. The Applicant impermissibly attempts to advance un-pleaded complaints in respect of Core Ground 5-7 by way of written submissions and this statement of case. In particular, the Applicant seeks to advance the following un-pleaded claims that:

- the existing SSCOs are 'vague and insufficiently precise' and therefore do not amount to SSCOs (§62 of the Applicant's Submissions).
- the level of winter bird surveys carried out by Marshall are insufficient (§63 of the Applicant's Submissions).
- There was no consideration of Annex I and Annex II species in the NIS/rNIS or by the Commission, or no consideration of migratory birds in that context (§66 of the Applicant's Submissions).

Applicant's Position

1. It is not accepted that the Applicant has introduced any number of new matters not pleaded on a fair reading pleadings and in response to matters raised in Opposition papers.

2. The Applicant is not introducing a new point to the effect that the two reasons actually comprise seven sub-reasons; that is simply an analysis of the reason itself and this objection is confusing appropriate matters for legal submission with pleading requirement. Similar confusion relates to an objection of 'entirely new argument' relating to SPPR 3; pleadings are not for 'legal arguments'. Arguments, relating to the subsequent Supreme Court judgment in Coolglass, could not have been pleaded nor would have they appropriate to plead matter of legal submissions. Core Ground 5 has not been expanded: the written submission are in response to the Opposition papers of the Respondents/Notice Party which seek to characterise certain objectives as SSCOs when the Applicant has pleaded that these are generic objectives as pleaded. A legal argument that these are too vague to amount to SSCOs and are therefore generic objectives, is not an expansion of the case.

(ii) points contended to have been made in the process, but not pleaded;

Commission's Position

3. The Applicant made a submission to the planning authority, Galway County Council as well as a further submission to the Commission on appeal, dated 30 September 2024. Both submissions were prepared by Padraic Hession & Associates. While the submissions raised certain points to do with the Gurraun [*sic*] UFP, design, road layout, open space, the points identified in the Applicant's pleaded case were not raised, specifically the issues relating to material contravention (Core Ground 1), failure to apply SPPR3 in the 2024 Guidelines (Core Ground 2) and failure to have in place site-specific conservation objectives (Core Grounds 6 and 7).

4. There are certain additional matters which the Applicant raised before the Commission which do not appear to be pleaded, in any respect. For example, the Applicant made a point to the Commission that the Proposed Development is premature given the area in which it is located is without amenity.

5. In addition to the foregoing, the Applicant's submissions to the Commission about the car parking provision at the Proposed Development are inconsistent with the pleas advanced by the Applicant at Core Grounds 1 and 2 of the Statement of Grounds. Before the Commission the Applicant complained that insufficient car parking provision had been provided for the creche. At Core Grounds 1 and 2, the Applicant completely inverts this argument to the effect that the car parking provision at the Proposed Development is far in excess of the maximums provided in SPPR 3. While the point may have been raised in the process, the Applicant argues the total opposite before the Commission to that which he advances in these proceedings. Furthermore, as set out above, the Applicant did not raise any issue with respect to SPPR 3 in his submissions to the Commissions.

State's Position

6. Not applicable to Core Grounds 6 and 7 as pleaded against the State Respondents.
Notice Party's Position

7. The Applicant made submissions to the Council and the Commission. In the Applicant's submission to the Council (made by his Planning Consultant) six points were raised:

- (i) Gurran [*sic*] Urban Framework Plan ('GUFFP') – raising concerns regarding Greenway, Density, and Prematurity
- (ii) Roads – raising complaints regarding DMURS and alleging deficiency in cycle lanes and pedestrian routes

- (iii) Open Space – raising complaints that the public open space provision was deficient
 - (iv) (4) Creche – raising complaints of lack of car parking and that the provision to reduce car parking did not apply
 - (v) Design – raising complaints of alleged low quality design
 - (vi) Transport Connection – raising concerns relating lack of adequate public transport.
- None of those points are raised in the terms alleged in the Statement of Grounds (addressed in greater detail at point (iv) of section H).

8. In the Applicant's submission to the Commission (made by his Planning Consultant) seven points were raised. The first six points reflect the six points made in the submissions to the Council and addressed above. The seventh point raised, related to appropriate assessment screening concerning the Inner Galway Bay SPA and the Galway Bay Complex SAC which raised alleged concerns regarding the Curlew, Kestrel and Redwing birds. This seventh point is also not raised in the terms alleged in the Statement of Grounds (addressed in greater detail at point (iv)).

Applicant's Position

9. All of the grounds were raised insofar as it was possible in the submissions; in any case the matters concern autonomous duties on the Commission and there is no requirement to raise such matter and others were not capable of being raised such as inadequate reasons. In addition to raising material contravention matters, the submission referred to a car dominated development, which is directly in conflict with the principals of the GUPP to 'deliver a truly public transport focused settlement (1.3) and '...urban car dominated development, directly in conflict with the GUPP' (5.0) (core ground 1) and cited reason 2 and 3 of the planning authority concerning material contravention. The Applicant has not inverted its submission re car parking, as the submission was in the context of the creche itself being inadequate in scale and in that context also observing car parking provision for the creches was also not in accordance with national guidelines relating to creches. Moreover the submission had expressly objected to the car borne nature of the development and excessive car parking spaces reflects the same.

(iii) points contended to be referred to narratively/contextually in the pleadings but without any properly formulated legal plea;

Commission's Position

10. The Commission does not understand that any point referred to narratively/contextually in the pleadings but without being properly formulated legal plea is at issue in the proceedings.

State's Position

11. Not applicable to Core Grounds 6 and 7 as pleaded against the State Respondents
Notice Party's Position

12. The Notice Party adopts the position of the Commission.

Applicant's Position

13. Does not arise.

(iv) points contended to have been pleaded but not made by the applicant in the process;

Commission's Position

14. In his submissions to the Commission, the Applicant did not make the specific complaints he now advances at Core Grounds 1-7 of the Statement of Grounds. At Core Grounds 1 and 3 the Applicant alleges material contravention of the Development Plan. This was not advanced before the Commission. Insofar as the submissions raised such issues such as design and road layout, these were not framed as material contravention of the Development Plan.

15. At Core Ground 4, the Applicant alleges a failure on the part of the Commission to give adequate reasons and/or to take into account relevant considerations and/or acted in breach of s.15 of the Climate and Low Carbon Development Act 2015 as amended, in stating its decision was consistent with the Climate Action Plan 2024. The Applicant's submissions to the Commission were entirely silent on the issue of CAP-24.

16. The Applicant's pleas at Core Grounds 5-7 allege a failure with respect to SCCOs at Inner Galway Bay SPA and the Galway Bay Complex SAC. These pleas are a complete departure from the extremely general concerns raised by the Applicant about the SPA and SAC (and more particularly the impact on the Curlew, Kestrel and Redwing birds) in his submissions to the Commission.

17. At Core Grounds 1 and 2, the Applicant advances a completely different argument to that raised in his submissions to the Commission. In his submissions to the Commission, the Applicant complained that insufficient car parking provision had been provided for the creche. However in these proceedings the Applicant inverts this argument to the effect that the car parking provision at the Proposed Development is far in excess of the maximums

provided in SPPR 3. The Applicant did not raise any issue with respect to SPPR 3 in his submissions to the Commission.

State's Position

18. Not applicable to Core Grounds 6 and 7 as pleaded against the State Respondents.

Notice Party's Position

19. It is Marshall's position that none of the grounds of challenge raised in these proceedings were raised during the planning process by the Applicant.

20. Core Ground 1 and 3 concern complaints of material contravention of the Development Plan and the Applicant made no submissions alleging material contravention during the planning process.

21. Core Ground 2 concerns SPPR3 of the Compact Settlement Guidelines and relates to a complaint that the Proposed Development has too much car parking and relatedly the Applicant alleges a breach of Section 15 of the 2015 Act in Core Ground 4 on the same basis. No submissions were made by the Applicant in respect of SPPR3 or Section 15.

22. However, and more significantly, the Applicant made inconsistent submissions to the Council and Commission to what are maintained in these proceedings. Before both the Council and the Commission the Applicant maintained that too little car parking was being provided in respect of the Creche and that provisions requiring reduced parking did not apply.

23. Core Grounds 5-7 concern complaints related to alleged absence of SCCOs/conservation measures in respect of Inner Galway Bay SPA and the Galway Bay Complex SAC. The Applicant made no submissions during the planning process regarding these issue and raised a complaint (not maintained in these proceedings) that alleged concerns regarding the Curlew, Kestrel and Redwing birds.

Applicant's Position

24. The Applicant engaged an expert (Hession) who made a submission on his behalf both to the planning authority 19th [July] 2024 and to the Commission of 30th September 2024. In the second submission to the Commission, the Applicant relied on the reasons for refusal by the planning authority including finding material contraventions of the development plan and said these have not been addressed in the appeal and apply to the proposed development. Section 1.1 cited and expanded on reason given of materially contravene policy objectives LUPT1, WC1, WC3, GBW171 and DM Standards 28 and 33 of the Galway County Development Plan 2022-2028 and also Section 2.1 where the reason cited that the development would '...negatively impact on road and pedestrian safety which was also stated in the recommendation of the inspector. In the second submission of 30th September 2024 to the Commission, the Applicant relied on the reasons for refusal by the planning authority in particular finding material contraventions of the development and affirmed the same in its submission before the Commission. In addition, the submission referred to a car dominated development, which is directly in conflict with the principals of the GUPP. The original submission to be planning authority also 19th July 2024 also raised many of the issues in substance It is therefore incorrect for the Commission or Notice Party to state core ground 1 to 7 were not raised in the submissions. Inadequate reasons is a matter which can only arise post decision, but in case, the reasons given by the planning authority were also reflected in the recommended reasons of the inspector and the submission has said the appeal/development had not addressed the same. The submission had raised material contravention of the development plan and Garraun Urban Framework Plan as incorporated; the car borne nature of the development in breach of the Framework Plan (and the excessive car parking spaces reflects the same). The submission referred to screening for AA by reference to the Inner Galway Bay SPA and the Galway Bay Complex SAC. The failure of the State to designate SSCOs is not a matter which the Commission could address and so it not a matter which required or was appropriate to be address in its submission to the Commission

(v) points contended to have been both made in the process and also pleaded;

Commission's Position

25. The Commission acknowledges that certain issues were identified in the Applicant's submissions on appeal but the substance of the Applicant's pleaded complaints were not made to the Commission

State's Position

26. Not applicable to Core Grounds 6 and 7 as pleaded against the State Respondents.

Notice Party's Position

27. The Notice Party does not accept that any points pleaded were made in the planning process and refers to its position on point (iv) above which are incorporated here by reference.

Applicant's Position

28. All of the matters pleaded, were raised in submissions insofar as it was possible and appropriate to do so."

68. It is not necessary to address the vast majority of these points. The two points I will address are as above, *viz.*, whether relief should be refused by reason of the applicant not having made a developed case about the material contravention of the GUPF drawing in submissions (No) and whether relief should be granted regarding transposition shortcomings that were not expressly pleaded (also No). These are addressed further below.

Domestic law issues

Core ground 1 – contravention of development plan and related instruments

69. Core ground 1 is:

"1. The impugned decision of the First Named Respondent made on the 30th January 2025 LH07.320747 is invalid as it erred in deciding that the proposed development was in accordance with and/or would not materially contravene the Garraun Urban Framework Plan contained in Volume 2 of the Galway County Development Plan 2022-2028 including GUPF 10 and Policy objectives PM1, PM5, PMG, PM8, PM 13 and UL2 and Development Management Standards DM1 in the 2022-2028 plan and/or misinterpreted the Garraun Urban Framework Plan and/or failed to take into account relevant considerations and/or gave inadequate reasons (including for disagreeing with its inspector in breach of section 34(10(b) of the 2000 Act as amended) in deciding that the proposed development was in accordance with the Garraun Urban Framework Plan"

70. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicant's Position

30. The proposed development is a car borne development involving either 269 or 266 car parking 7 spaces (which exceeds the maximum for accessible locations under the Sustainable Residential Compact Settlement Guidelines as pleaded at core ground 2) and with inadequate pedestrian and cyclist facilities. The proposed development does not therefore accord with the policies and objectives of the UFP and GUPF 10 and/or materially contravenes the same. The planning authority, the Applicant, other members of the public and An Taisce, all raised issues concerning the car borne nature of the development as being incompatible with the public transport focused nature of the settlement under the UFP. The Commission did not consider this fundamental nature of the plan led development envisaged under the UFP and GUPF 10 at all nor did it give any reasons which address the car borne nature of the development.

31. Section 7, contains the Framework Masterplan and pg. 36 refers 'Key Features of the Framework Masterplan' which is shown on the drawing at pg. 37. Among the key features within the site of the proposed development comprise those marked on the map at item 1, 7, 10, 13, 17 which include: 7 Green Spines; 13 Vehicular Access points; 17 secondary streets. The proposed development is not in accordance with any of the key features indicated for the site, where the secondary street is a continuous street (17) and not broken into stagger junctions; the green spine is not replicated in the proposed development and the condition of the trees is irrelevant as the green spine at (7) is a matter of design and not about retention of existing trees (the green spine could be subject to replanting). Furthermore, the vehicular access point to the site was to form part of a continuous street and not a separate. In addition, the Commission did not address and/or give any other reasons for:

- submitted layout is design in the form of cells/ blocks and housing is provided within these

- the layout of the development along the R338 does not provide for a strong frontage but instead has a linear park which another departure from the plan

- The proposed development is designed as a standalone scheme with little indication as to how it will integrate with adjoining areas.

- In addition the UFP does not show a central open space, but a linear park on the western and northern periphery of the site

- The lack of variation in the character of the houses

32. The Commission therefore erred in considering the proposed development was in accordance with the UFP and/or the Board misinterpreted the framework including the framework drawing at pg. 38 of the plan and/or failed to take into relevant consideration and/or gave inadequate reasons. The Commission further erred in failing to taken into account the cumulative differences between the proposed development and UFP.

Commission's Position

33. There was no failure on the part of the Commission to consider or have regard to the policies of the UFP and GUPF 10 in reaching its Decision. Rather the Commission carried

out a comprehensive assessment of the Proposed Development and expressly addressed the requirements of the Garraun UFP, including urban design, placemaking, public realm, layout and design. The Commission went onto to determine that, subject to compliance with specified conditions, the Proposed Development would 'be in accordance with the policies and objectives' of the Development Plan and Garraun UFP. The Commission provided clear reasons for reaching its Decision. Amongst these reasons was that the Commission did not consider that the Proposed Development would 'materially contravene the Garraun Urban Framework Plan'.

34. With reference to the foregoing, the Commission clearly considered and/or had regard to the policies of the UFP generally and GUFFP 10 more specifically. The Commission's Order sets out clear reasons for why it came to the view that the Proposed Development would not materially contravene the Development Plan. There is no error in the Commission's Decision in this respect. Moreover, the assessment of the adequacy of information is entirely a matter for the Commission in the exercise of its expert planning function. The principles as they relate to placemaking etc. set out in the Garraun UFP are qualitative in nature and therefore require the exercise of planning judgment, which is entitled to curial deference. Such curial deference may only be displaced by irrationality and/or unreasonableness on the part of the Commission, neither which arises here.

State's Position

35. Core Ground 1 is not pleaded as against the State Respondents.

Notice Party's Position

36. The Proposed Development has a totality of 266 car parking spaces (and for the avoidance of any doubt is not in breach of SPPR3 which is addressed in Core [Grounds] 2 below). Core Ground 1 alleges that the Proposed Development is in material contravention to a range of provisions of the Development Plan none of which are outlined in the Applicant's pleaded case. It appears having regard to this Statement of Case that the Applicant in reality only advances a complaint regarding GUFFP 10.

37. In this regard, it is important to note that while the Council did refuse permission due to material contravention of other policies, the Council did not find that the Proposed Development was in material contravention GUFFP 10 or the GUFFP but only that the development was contrary to GUFFP 10 and the GUFFP. By way of preliminary matter, the Applicant made no submission during the planning process that any material contravention arose. Furthermore, the Inspector who recommended that permission be refused did not make any finding of material contravention.

38. The Applicant's submission repeatedly alleges that the 'car-borne' nature of the Proposed Development amounts to a material contravention of the GUFFP. However, no particulars of what provision is engaged or how the Commission misinterpreted that provision are set out. The Commission's conclusion that the Proposed Development is consistent with the identified Development Plan provisions and GUFFP was a permissible exercise of evaluative planning judgment on the materials before it and has not been challenged as irrational.

39. Core Ground 1 also pleads complaints regarding a failure of reasons for departing from the Inspector's Report but these do not feature in the Applicant's input into the Statement of Case and it is presumed that this complaint is not being pursued.

40. All eight of the Development Plan's provisions identified by the Applicant, when properly interpreted, involve matters of flexibility, discretion and/or planning judgment, and are only reviewable on the basis of irrationality (which is not pleaded by the Applicant in this respect). It is noteworthy that the Applicant, in their submissions, does not engage with any alleged misinterpretation, on the part of the Commission, of any of these provisions of the Development Plan.

41. The Commission gave express reasons as to why it found that the Proposed Development was not contrary to the relevant provisions relied upon by the Applicant and in particular, Marshall refers to the reasons set out at pages 3, 4 and 6 of the Commission Order."

71. The pleaded provisions specifically relied on are: "GUFFP 10 and Policy objectives PM1, PM5, PM6 [this is a misprint for PM6 – we know that because the statement of grounds claims that the council refused permission on the basis of PM6 whereas PM6 was referenced], PM8, PM 13 and UL2 and Development Management Standards DM1 in the 2022-2028 plan", as well as the drawing on p. 37 of the Garraun Urban Framework Plan (GUFFP) section 7.0. The last one is where we will start.

GUFFP section 7.0 drawing

72. The real problem for the opposing parties is the drawing in the GUFFP section 7.0 at p. 37 setting out how this area and site should be developed.

73. The problem for the opposing parties is that even the most casual comparison between the UFP map – what is supposed to happen, and the consented project – what did happen, shows differences that need to be considered.

74. The legend states (relevant to the site in bold):
 "KEY FEATURES OF THE FRAMEWORK MASTERPLAN

Land uses

1. **Residential (existing and proposed)**

2. Garraun Local Centre
3. Employment area
4. Dual use education site

Landscape

5. Garraun EcoPark
6. Amenity/community hub
7. **Green spines**
8. Retained trees and hedgerows
9. Public open space
10. **Potential Coastal Greenway**

Access and movement

11. Train station
12. Station car park
13. **Vehicular access points**
14. Dedicated pedestrian/cycle links and routes
15. **Pedestrian/cycle rail crossings**
16. Primary street
17. **Secondary streets**
18. Local Access Only"

75. There are a number of obvious significant differences, specifically:

- (i) the east-west street (a phrase evocative of Phillippe Sands' 2016 book set in Львів/L'viv) is a continuous street in the plan, but broken into stagger junctions in the consent;
- (ii) the green spine is not replicated in the consent;
- (iii) housing is in the form of cells/blocks not specifically envisaged in the plan;
- (iv) the frontage is different;
- (v) there is no central open space in the plan;
- (vi) there is a stronger linear park on the western and northern periphery of the site in the plan; and
- (vii) there is potentially greater connectivity between the east-west street and the R338 at the western end of the site albeit not necessarily for vehicles.

76. As to the complaint that the applicant did not raise this issue, the position is as follows.

77. On 19 July 2024, Padraic Hession & Associates made a submission to the commission on behalf of 13 named residents, including the applicant – exhibit MMS3 tab 3.

78. It begins on p. 1 with the relevant drawing at section 7.0 of the GUPP – a good start perhaps for present purposes, but while it goes on to raise certain issues including connectivity, it does not specifically make a point about material contravention in the above respects.

79. In those circumstances it would be inappropriate to grant relief on a basis going beyond what would have been apparent objectively to the commission by way of autonomous obligation, namely what the inspector states as follows (emphasis added):

"8.4 Impact on the Character of the Area

8.4.1 The Planning Authority refused the development due to concerns about the layout of the site and failure to have regard to the Garraun Urban Framework Plan (UFP) in terms of connectivity, landscape and placemaking considerations. Similar issues were raised in the third party objections/ observations. Some revisions have been made to the layout in support of the appeal, but these do not significantly revise the layout.

8.4.2 Access to the site is to the west of an existing local road and this is generally in accordance with the Garraun UFP. The UFP also indicates **an east to west secondary street and strong frontage along the southern section of the site facing onto the R338 coastal road. On the UFP the secondary street connects to the R338 towards the western part of the site but there is no indication that it provides for a vehicular link at this point.**

8.4.3 The submitted plan, and the revised plan in support of the appeal, indicate that **the east to west street actually consists of three separate streets, with the access road connecting to the public road also separate.** The submitted layout is design in the form of cells/ blocks and housing is provided within these. In an attempt to provide for traffic

calming the east to west street is divided into smaller sections but **the use of staggered junctions does not allow for a continuous street through the site. The provision of two storey houses and the staggered nature of the streets, does not provide for the type of street indicated in the UFP.** Similarly, **the layout of the development along the R338 does not provide for a strong frontage. The provision of mostly two storey houses facing onto a street/ shared street, with landscaping providing a buffer between these units and the existing public road, does not suggest the type of layout indicated in Section 7.0 of the UFP.**

8.4.4 Considering the very low density of housing in the immediate area of this site, the proposed development will not have an adverse impact on these units. I am not satisfied that the layout has adequate regard to the UFP which suggests a more urbanised/higher density form of development than is the case with the proposed scheme which is of a more suburban housing development. The UFP promotes the development of an urbanised development focused on a railway station and proposed adjoining local centre to the north. The proposed development is designed as a standalone scheme with little indication as to how it will integrate with adjoining areas. Permitting the submitted layout would set an undesirable precedent for similar development in the area, especially considering that this is the first of these sites to be submitted for development.

8.4.5 **The UFP indicates a green spine running north south located to the eastern half of the site. No such provision is made in the submitted layout.** An area of open space is provided towards the centre of the site and also to the south along the R338 and to the east which forms a buffer with the existing local road and the farm to the east.

8.4.6 I therefore recommend that permission be refused due to the proposed layout and character of development not demonstrating that it complies with the indicative layout of Section 7.0 of the Garraun UFP."

80. And (emphasis added):

"11.2 The subject site is located within lands that form part of the Garraun Urban Framework Plan (UFP) that forms part of Oranmore, and which is included in Volume 2 of the Galway County Development Plan 2022 – 2028. The UFP provides an indicative layout in **Section 7.0 which indicate an east to west street and a green spine on the subject lands. An indicative street frontage suggests a development that would be of a greater urban density/ intensity than that proposed which is suburban in character. The UFP also indicates a greater level of connectivity than that proposed.**"

81. This leaves us with essentially four points of possible material contravention of the drawing at 7.0 which were before the commission:

- (i) no single east-west street;
- (ii) no green spine;
- (iii) lack of stronger frontage onto the coast road (the inspector does not specify which provision exactly he is referring to but I am assuming it relates to the fact that the R338 marks the whole southern boundary of the GUPP area (not just this site) and so inherently a strong boundary front is implicit – if the commission disagreed with that they need only have said so when engaging with the text of the plan for the purposes of the *Sherwin* test); and
- (iv) lack of connectivity (specifically the entrance on to the coast road at the western end of the site).

82. These four points are adequately pleaded in sub-grounds 17 and 18 albeit that point (iv) is phrased in terms of a secondary sense of the road not being continuous and/or not integrating with adjoining areas (emphasis added):

"17. The proposed development is not in accordance with any of the key features indicated for the site, where **the secondary street is a continuous street (17) and not broken into stagger junctions; the green spine is not replicated in the proposed development** and the condition of the trees is irrelevant as the green spine at (7) is a matter of design and not about retention of existing trees (the green spine could be subject to replanting). Furthermore, **the vehicular access point to the site was to form part of a continuous street and not a separate.** In addition, the Board did not address and/or give any other reasons for

- submitted layout is design in the form of cells/ blocks and housing is provided within these

- the layout of the development along the R338 **does not provide for a strong frontage** but instead has a linear park which another departure from the plan

- The proposed development is designed as a standalone scheme with little indication as to **how it will integrate with adjoining areas.**

- In addition the UFP does not show a central open space, but a linear park on the western and northern periphery of the site
- The lack of variation in the character of the houses

18. The Board **therefore erred in considering the proposed development was in accordance with the UFP and/or the Board misinterpreted the framework including the framework drawing at pg. 38 of the plan** and/or failed to take into relevant consideration and/or gave inadequate reasons. The Board further erred in failing to taken into account **the cumulative differences between the proposed development and UFP.**"

83. The provisions of the decision relevant to these points are as follows (emphasis added):
 "It is considered that, subject to compliance with the conditions set out below, the proposed development **would be in accordance with the policies and objectives of the Galway County Development Plan 2022-2028, in particular the Garraun Urban Framework Plan (UFP)**, the Core Strategy and zoning objective. The proposed development **would not materially contravene the current development plan for the area**, would not constitute a traffic hazard by reason of significant additional traffic or traffic movements, would be in accordance with the Urban design principles of placemaking set out in the Urban Framework Plan and be in accordance with the proper planning and sustainable development of the area.

...

The applicant has demonstrated that the proposed access is not a traffic hazard. The vehicular access to the site is positioned to align with the requirements of the Urban Framework Plan. This access point was always going to require traffic to turn off the Coast Road into the local road, the matter of delivering the traffic management zone on the coast road as indicated on the urban framework plan and the strategic cycle network is a matter for the local authority to deliver. The site is identified as a phase 1 residential site, to refuse permission on the basis that the wider infrastructure is not in situ, particularly where the developer is proposing to provide improved connectivity, would undermine the core strategy of the development plan. Therefore, the Board did not concur with reason 2 and 3 recommended by the Inspector or reason 2 and 3 of the planning authorities' reason for refusal. The Scheme as proposed **does not contravene the policies in the development plan as referenced in the reasons for refusal and addressed above.** The Board considered that the infrastructure proposed on the public road should be delivered with the first phase of the development and prior to any house being occupied; this could be dealt with by condition.

Addressing the Inspectors first recommended reason for refusal; the Board considers having regard to the details submitted both with the application and the appeal, the design and layout **does not materially contravene the Garraun Urban Framework Plan, the applicant has provided an east west route albeit staggered for reasons to do with traffic calming. The broken line of trees that are identified as a green spine in the Urban Framework Plan (Section 7), the arborist drawings accompanying the application show that the trees have a limited life and no evidence to the contrary has been provided, the applicant has designed the scheme to retain the trees that merit retention. The landscape plan clearly shows the significant level of new planting proposed, this accords with the Urban Framework Plan.** The Board noted the Inspectors concerns regarding internal pedestrian routes, the Board considered that **on balance the applicants rationale set out in the architectural design statements and the connectivity provided through the open space areas create internal connections, in addition to the footpaths on the streets, and therefore the scheme was acceptable.**

...

On the wider matter of urban design, placemaking, public realm, layout and design, and compliance with the parameters of the Urban Framework Plan for this site the Board **considered that the design and layout align with the key features of the UFP, drawing contained in Section 7, except for the green spine with the reason for not retaining the totality of the green spine, the condition of the trees, being acceptable.** The Board, therefore, did not concur with the planning authority."

84. What confuses the discussion is the repeated assertion that there is no material contravention. We need to be clear that simply asserting this conclusion (let alone repetitively doing so) cannot constitute proper engagement with the *Sherwin* factors. That would defeat the whole purpose of the doctrine. The fact that it was thought necessary to repeat that so much smacks of legal defensiveness – a better approach would have been to engage with the four-step analysis discussed above.

85. Taking what *Sherwin* calls “the first question”, we have to ask what was the decision actually made by the decision-maker, **as to whether or not the proposed application as a matter of law and fact would materially contravene the development plan.**

86. This will be easier to put in tabular form by reference to the four issues put on the table by the inspector:

Inspector’s identified contravention	Step 1 – was the text specifically engaged with in relation to the alleged contravention?	Step 2 – was there a reasoned decision on contravention?	Step 3 – was there a reasoned decision on materiality?	Step 4 – was justification assessed by reference to the statutory criteria in s. 37(2)?
No east-west street	Yes (plan provision for east-west street acknowledged)	No. The commission states that an east-west “route” is provided but does not address the departure from the plan by not having a single street. There is an obvious planning distinction between a single street as a strong urban statement and a “route” consisting of a jagged medley of small streets typical of a suburban development. The commission does not address this.	No	No
No green spine	Yes (plan provision for green spine acknowledged)	Yes (implied that there is contravention by reference to fact that it does not “align”).	No	No
Lack of stronger frontage onto R338	No	No (the reasoned discussion relates to whether the scheme is “acceptable”). Possibly the commission could have held that there was no contravention but they did not engage with the inspector’s	No	No

		reasoning on this point.		
Lack of connectivity at western end	No (general reference to connectivity but no reference to the GUPF drawing showing access from the western end to the R338)	No (the reasoned discussion relates to whether the scheme is "acceptable")	No	No

87. Thus the essential problems with the commission's decision were:

- (i) In respect of two of the inspector's headings, the commission failed at the first hurdle to engage with the relevant text of the plan, and went on from there to fail to identify in a reasoned way whether there were departures from the plan, and to give a reasoned assessment of the materiality of such departures if found.
- (ii) In the case of the east-west street, the commission did address the text of the plan but did not give a reasoned analysis of whether there was a contravention, simply using a different word (route as opposed to street) without acknowledging the obvious planning difference, and moving straight to whether the application was acceptable *i.e.*, justified.
- (iii) In the case of the green spine, which is the clearest problem given the essential admission of non-conformity with the plan, the commission did identify that the project did not "align", but also failed to go on to give a reasoned consideration of materiality. Saying that the design aligns with the plan except for X implies to a reasonable non-expert reader that it does not align in respect of X. Such a reasonably intelligent well-informed non-expert reader (*Re XJS Investments Ltd.* 1986 WJSC-SC 1935, [1986] I.R. 750, [1987] I.L.R.M. 659 (McCarthy J., *nem. diss.*)) would read a statement of non-alignment as equivalent to contravention. We can also note that the reasons (allegedly defective trees) for the departure do not accord with the plan insofar as they suggest that the plan is limited to preserving existing trees.

88. All of these important distinctions were simply collapsed into a general planning judgement as to the acceptability of the scheme coupled with a defensive unreasoned assertion of lack of material contravention. Insofar as the decision asserts that the grant of permission does not materially contravene the plan, there is no basis identified for this assertion. The *Sherwin* tests cannot be satisfied by an assertion that permission should be granted, so they can't be satisfied by a mere assertion that there is no material contravention. Insofar as the commission gives reasons, they go to justification/acceptability, not contravention/materiality.

89. As to the notice party's fallback arguments such as that the spine was in effect being relocated, that there was alternative planting/ open space, that the frontage/connectivity was reasonable in the circumstances, that the street staggering was for safety reasons, such matters also go to justification or at best materiality. Such possible answers don't airbrush out the problem that the commission did not approach the matter methodically by first engaging with the text and then attempting a reasoned analysis of whether there was a contravention and whether it was material. We are reviewing the decision not re-writing the decision.

90. While I have certainly given serious consideration to the question of discretion this does not seem to be a case where the applicant should be denied relief. As the Supreme Court emphasised in *Sherwin*, the development plan holds a central place in the planning system. It is not entirely without relevance that this is an institutionally controversial project, gaining no support from the council or the inspector, thus making the exercise of discretion less compelling than might otherwise be the case, or put alternatively, adding a legal policy reason for leaning towards a result that would permit further scrutiny within the planning process itself.

91. In terms of the relevant criteria as set out in caselaw setting the doctrinal bounds of discretion:

- (i) As to the action or inaction of the claimant, the applicant did raise the council's concerns in the process albeit in a general way.
- (ii) As to the practical value of the remedy, it clearly has a practical value.
- (iii) As to the proportionality of *certiorari*, this is a process issue, granted, but more than a merely technical one.
- (iv) As to the importance of the countervailing legal value being protected by the impugned decision, the importance of housing is a factor in favour of discretion being

exercised, but that has to be weighed against other factors and was clearly not enough in *Sherwin* (a project with coming up to 10 times as many housing units consented).

- (v) As to prejudice or the lack of it to the applicant or anyone else and the impact a remedy will have on others, there are no reliance interests that will be unfairly disturbed by *certiorari* because this project was challenged within time. The applicant would suffer prejudice by the refusal of relief. The notice party will obviously be adversely affected by the grant of relief so that carries some weight, albeit diluted to some extent by the fact that this is not the legally decisive prejudice that attaches to a reliance interest (where a permission is challenged out of time for example).
- (vi) In terms of the seriousness of the error, the central importance of the development plan is relevant. Furthermore, refusing *certiorari* would dilute the practical need for, and disincentivise the commission from needing to pay due attention to, the application of the Supreme Court's decision in *Sherwin*: see *Protect East Meath Ltd. v. Meath County Council* [2026] IESC 1 (Unreported, Supreme Court, 22 January 2026) as to the need to grant effective relief in the event of breach of law.

92. One general contextual matter that could be relevant to any further hypothetical procedures is that the arborist's argument that trees are of a limited life seems to have been accepted with notable readiness by the commission – but all trees are of a limited life. Insofar as there are comments about defects in the trees to be felled, many trees have defects. Things should not be rejected merely because they have defects. Not specific to this case, but over-reliance on felling-friendly rationales can at times veer into the realms of excuse. Reasons can always be found for felling any tree. That is just a general point as to the need for tree-felling to be closely interrogated by decision-takers and other process participants, not of course a basis for *certiorari* in this case. Without of course suggesting that the arborist's conclusions here are open to question, there was nonetheless little interrogation of the developer's tree health contentions, and perhaps in any revived process there would be an argument for matters being dealt with at a stage that would allow the critical issue of tree-felling to be debated more thoroughly. Plus we have the problem that even if trees in the green spine are in fact terminally defective in some urgent way, the plan is not confined to existing trees, so defects are *nihil ad rem* and compliance with the plan could involve planting new large replacement trees in that area.

93. A further potential issue for discussion in such a hypothetical context (given the pleaded issues) is the fact that the judgment of the CJEU is awaited in the reasonably near future in Joined Cases C-27/25, Knocknamona and C-356-25, Massey, so that may be a factor to be considered procedurally.

Other issues under core ground 1

94. At the level of principle, the commission should have specifically engaged with the text of each of the other plan provisions said to have been contravened by any of the statutory actors (and any additional provisions where a weighty case was made in submissions – mere assertion in submissions would not suffice to trigger such duties).

95. The pleaded provisions other than the GUPF section 7.0 drawing key features are:

- (i) GUPF 10 integration;
- (ii) PM1 placemaking;
- (iii) PM5 sustainable transport;
- (iv) PM6 health and well-being;
- (v) PM8 character and identity;
- (vi) PM13 public realm opportunities;
- (vii) UL2 layout and design; and
- (viii) DM1 development management standard.

96. I do not need to consider these further in the light of the finding in relation to the GUPF section 7.0 drawing key features, which is dispositive of the case.

Other core grounds

97. In the light of the foregoing it is not necessary to decide the other grounds going to *certiorari*.

98. As to declaratory relief, it emerged that the State has not established conservation objectives:

- (i) in respect of the SPA QI regarding the Black-throated Diver (*Gavia arctica*) [A002]; or
- (ii) as regards the SAC QIs [1230] Vegetated sea cliffs of the Atlantic and Baltic coasts and [8240] Limestone Pavements.

99. However, given that these were *not* shortcomings that were specifically pleaded (the applicant instead just making a generalised plea of no transposition), it is neither necessary nor appropriate to grant a declaration. Nor indeed did the applicant plead that conservation measures

needed to be reduced to specific, accessible, written form – an interesting point which will have to await another case. But I will record the foregoing problems in case they are not rectified within a reasonable time in which case more vigorous legal responses may become more attractive should these issues rear their head in future litigation. Such litigation is not precluded by my making no order on these issues now.

Summary

100. In outline summary, without taking from the more specific terms of this judgment:

- (i) it is settled law that where issues arising rendering it relevant, a planning decision-taker must engage with the text of the development plan said to have been contravened, make a reasoned determination in effect as to whether there is a contravention and whether that is material, and if so, address the question of material contravention by reference to the applicable legal framework, particularly s. 37(2) of the 2000 Act where it applies; and
- (ii) applying such law to the facts here, the commission did not do that.

Order

101. For the foregoing reasons it is ordered that:

- (i) there be an order of *certiorari* based on relief 1 claimed in the statement of grounds removing for the purpose of being quashed the order of the first named respondent (ABP ref. LH07.320747 (planning authority case reference 24/60733), made on 30 January 2025 granting the notice party permission for a large scale residential development (LRD) comprising of the demolition of the existing shed and associated structures on site and the construction of 170 no. residential units, 1 no. crèche and all associated development works including the provision of pedestrian/cyclist facilities along the R338 public road connecting to Oranmore rail station, 1 no. ESB substation, 1 no. pumping station, the undergrounding of the existing ESB lines traversing the site, footpaths, lighting, parking, drainage, bicycle and bin stores and landscaping/amenity areas, with access *via* a new entrance on the L-71051 to the east, at Cartron and Garraun South, Oranmore, County Galway;
- (ii) insofar as any claim in relation to relief or any other issue is not being decided by the court, there be no order in that regard but without prejudice to the parties' rights to advance the same or a similar claim or issue in any future proceedings;
- (iii) unless any party otherwise applies by way of written legal submissions within 7 days, the foregoing order be perfected forthwith thereafter on the basis of an order for costs (including reserved costs and the costs of written submissions) being awarded to the applicant against the first named respondent, insofar as concerns the relief against the first named respondent;
- (iv) any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication;
- (v) for the avoidance of doubt, the order for costs shall include an order for the costs of legal costs adjudication;
- (vi) there be no order as to costs in favour of or against any other party;
- (vii) for the avoidance of doubt, any unsuccessful application to vary any provisional order as to costs proposed in this judgment may be addressed pursuant to O. 103 r. 40(4) RSC; and
- (viii) the matter be listed on 09:30 on Monday 6 July 2026 to confirm the foregoing.