



[2026] IEHC 408

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2025.0001387]

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

BETWEEN

ROCKET PYROTECHNICS (IRELAND) LIMITED

APPLICANT

AND
AN COIMISIÚN PLEANÁLA

RESPONDENT

<i>Date of impugned decision:</i>	24 July 2025
<i>Date proceedings commenced:</i>	17 September 2025
<i>Date of main hearing:</i>	22 June 2026

JUDGMENT of Humphreys J. delivered on Friday 26 June 2026

1. The project in this case was held not to satisfy a development plan objective relating to “rural enterprises” that are “dependent” on a rural location. The question here is the interpretation of those concepts in the context of the particular plan concerned.

Geographical context

2. The project (<https://www.pleanala.ie/en-ie/case/320786>) is installation of a 40-foot metal shipping container underground with 3.2 m high earth mounding to all sides for the safe and secure storage of pyrotechnics (Class 1 hazardous goods) along with four square metres timber fence for packing and unpacking of pyrotechnics, green mesh security fencing, shock-proof fencing to site perimeter and all associated ancillary site works at Rathoma, Killala, Co. Mayo.

Parties

3. The applicant, Rocket Pyrotechnics (Ireland) Limited, is an Irish company that provides professional fireworks and special effects services. The respondent is An Coimisiún Pleanála, the decision-taker.

Facts

4. It may be helpful to begin with the applicant’s contextual submission:

“(B) RELEVANT BACKGROUND

5. The Applicant, Rocket Pyrotechnics (Ireland) Limited, is an indigenous, family-owned Irish company which has provided professional fireworks and special effects services in Ireland for over 25 years. The proposed development site is located on the lands of the historical Breen family home of one of the principals of the business at Rathoma, Killala, County Mayo. Mr Patrick Gerard (Gary) Breen is a director of the Applicant and Mr John Breen is its senior pyrotechnician.

6. The Applicant employs 3 full-time staff and 15 freelance, highly trained and specialised technicians (18 personnel in total). Its team includes creative designers and display managers who deploy state-of-the-art wireless firing technology and special effects equipment, choreographing performances synchronised with firings programmable to within one hundredth of a second. The Applicant provides pyrotechnics for multiple events on a weekly basis at locations nationwide, including large-scale arts, music and sporting events (such as the Rose of Tralee, Taylor Swift concerts, Aiken Promotions events and Leinster Rugby fixtures), corporate events, weddings and displays at historic landmarks, castles, stately homes and hotels. Past engagements include Riverfest Limerick, Electric Picnic (10th Anniversary), Spraoi Festival, the Ballina Salmon Festival, Bray Summer Fest, Ardmore Pattern Festival, St. Patrick’s Festival Dungarvan, Lismore Castle, Tramore Fun Fair, Ballymun Otherworld Festival, Finglas Halloween Festival, Swords Castle Halloween Festival and Brian Boru Festival, Puck Fair, Drogheda Christmas Bonanza and Carrick Carnival. Fireworks displays are a hallmark of major events such as the St. Patrick’s Festival, feature prominently in promotional materials of Fáilte Ireland, and play a pivotal role in arts festivals, national sporting events and Ireland’s growing TV and film industries. The Applicant is one of only two remaining indigenous pyrotechnics companies operating in the State.

7. The withdrawal of the United Kingdom from the European Union (‘Brexit’) has fundamentally disrupted the supply chain for the Applicant, making it substantially more difficult to secure combustibles and explosives in a timely manner. Two other indigenous Irish pyrotechnics companies have closed since Brexit. The Applicant currently has no storage or sorting facility of its own; each event must be specifically and separately ordered

for collection in person from Northern Ireland. The Applicant is wholly exposed to a volatile supply chain and bears the economic burden of increased costs, being prevented from bulk purchasing and storing supplies to achieve economies of scale, reduced transport overheads and shorter lead-in times for events. The business is, in consequence, under serious threat. The Applicant has engaged extensively with the Government's Inspector of Explosives, who has approved, in principle, five different potential locations for storage. The proposed volume of storage at the site (subject to licence) is up to 2,000kg of Hazard Type 1 explosives, and the site will be used solely for storage only and not for the manufacture or sale of supplies; access is anticipated on average four times per week and the development will not require full-time on-site employees nor generate traffic volumes significant enough to impact the local road network.

8. The Applicant has previously sought permission for storage facilities at alternative locations without success. On 22 June 2020, the Applicant applied for permission for a storage facility in County Wicklow (ref. 20/578); permission was refused on 12 August 2020, principally on the basis that the development was contrary to an objective to permit commercial development in rural areas only where there is a proven need to locate therein. A second application at the same Wicklow location (ref. 21/154) was refused by the planning authority on 29 July 2021 and on appeal by the Commission on 9 February 2022 (ref. ABP-311171-21) for the same principal reason. During 2022, the Applicant identified an industrial-zoned site in County Wexford and again obtained the Government Inspector of Explosives' approval in principle, but a section 5 declaration (ref. EXD00983) determined that the proposed storage facility was not exempted development, and the planning feedback indicated that an application would be refused. A prior application at the Mayo site the subject of these proceedings (ref. 23/60447) was refused on 22 March 2024 for the same principal reason."

5. On 25 June 2024, Rocket Pyrotechnics (Ireland) Limited applied to Mayo County Council for permission for a proposed development at Rathoma, Killala, Co. Mayo, comprising the installation of a shipping container underground for the storage of pyrotechnics and to carry out all associated ancillary site works.

6. A planning report dated 15 August 2024, signed by an executive planner and a senior executive planner, recommended the refusal of permission for one reason.

7. On 15 August 2024, the council issued a notification of decision to refuse permission for the said development for one reason.

8. On 11 September 2024, the applicant appealed to the commission against the council's decision. The appeal included a submission entitled "First Party Grounds of Appeal" prepared by MKO, Planning and Environmental Consultants and included, as appendices, the council's notification to refuse permission and a technical letter provided by Ryan and Associates Fire Consultants.

9. The commission received no third party observations on the appeal.

10. In line with its usual practice, the commission appointed an inspector, to prepare a report and make a recommendation on the appeal. The inspector carried out a site inspection on 20 February 2025, and prepared a report dated 2 July 2025, in which he recommended refusal of permission.

11. The commission considered the appeal at a meeting held on 22 July 2025. As recorded in the direction of 22 July 2025, the commission decided to refuse permission generally in accordance with the inspector's recommendation, for specified reasons and considerations.

12. A formal order dated 24 July 2025 was then prepared to reflect the direction of 22 July 2025. The "reasons and considerations" were as follows:

"Having regard to the rural location and the nature of the proposed development, the Commission was not satisfied that the applicant had demonstrated that the proposed pyrotechnics storage facility at this location was justified and the proposed development would be contrary to the objectives of the current County Development Plan, specifically Objective EDO 54, to facilitate rural enterprises, and resource development that are dependent on their locality in rural locations. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area."

Procedural history

13. On 17 September 2025, the proceedings were issued.

14. On 29 September 2025, I granted leave (order perfected on 30 September 2025).

15. On 2 October 2025, a notice of motion was filed.

16. On 12 January 2026, a hearing date of 22 June 2026 was fixed.

17. On 13 March 2026, the respondent's opposition papers were filed.

18. On 18 May 2026, the applicant's legal submissions were filed.

19. On 9 June 2026, the respondent's legal submissions were filed.

20. I might be allowed to commend both sides for the really excellent written submissions in this case, and while inevitably there are elements in submissions that are not being upheld, all submissions were helpful, and their measured and reasonable approach was particularly appreciated.

21. The procedural approach taken in this case was somewhat experimental in the sense that the parties agreed that innovative options could be taken to cut down on costs. One option which the court has is under O. 84 r. 22(8) RSC, to dispense with an oral hearing altogether (emphasis added):

“(8) The Court may on the return date of the notice of motion, or any adjournment thereof, give directions as to **whether it shall require at the hearing of the application for judicial review oral submissions** in respect of any of the written submissions of the parties on points or issues of law.”

22. I did not go that far. Oral submissions are of course the norm but in this instance the parties agreed that the initial case would be by written submissions, the court could then prepare a draft judgment with provisional findings, and the parties could make contrary oral submissions contesting the merits of any provisional conclusions in a brief hearing of the order of 30-60 minutes. Prior to the hearing, the parties were sent a draft judgment on 16 June 2026.

23. This is of course unfamiliar but not a completely unprecedented procedure in the common law world. The Supreme Court of California prepares a document equivalent to a draft judgment prior to the hearing but does not share it with the parties (Goodwin Liu, “How the California Supreme Court Actually Works: A Reply to Professor Bussel”, 61 *UCLA L. Rev.* 1246 (2014) <https://www.law.berkeley.edu/wp-content/uploads/2016/12/Goodwin-Liu-How-the-Supreme-Court-actually-works-2014.pdf>). Compared to that, the procedure the parties agreed to adopt here was far superior and in some ways the parties were able to obtain somewhat more influence over the shape of the judgment than a conventional approach where they are just informed of the court’s views after the chance for persuasion is over. This is not something I would want to impose but if parties in a given case are prepared to consent to such an approach there is something to be said for it. Also a certain degree of innovation may be beneficial in a context where judicial resources are limited given a near-doubling of the planning caseload since existing resources were allocated.

24. As with any draft judgment, parties are required to 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 LJ; Jackson and Simler LJ, concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

25. 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.

26. Contrary submissions could be made at the hearing. In particular, parties should draw the court’s attention to any apparent error or ambiguity whether they have been provisionally successful on the point or not.

27. 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.

28. While the proceedings predate Practice Direction HC 137, para. 58(a) of that practice direction would require the council to be put on notice. I proposed that the parties might furnish a copy of the draft judgment to the council forthwith with a view to having any contrary views communicated to the court before the judgment is finalised.

29. The matter was listed for mention on 17 June 2026. The commission sent a copy of the draft to the council who replied indicating that they would not be making comments.

30. The matter was to be heard on 22 June 2026, and brief submissions were made on foot of which the draft was amended.

31. 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 no 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. As no submissions were made about the draft order on costs I am assuming that there was no issue with what was proposed. In that regard one major advantage of the procedure the parties agreed here was that the costs have been kept to well below the industry norm in the context of High Court planning litigation.

Relief sought

32. The reliefs sought are as follows:

- "1. An Order of Certiorari by way of application for judicial review quashing the decision of the Respondent, An Coimisiún Pleanála, made on 24 July 2025 (reference no. ABP-320786-22) to refuse the Applicant's application for permission to install a shipping container underground for the storage of pyrotechnics and to carry out all associated ancillary site works on lands at Rathoma, Killala, County Mayo.
2. An Order remitting the matter to the Respondent to be considered and determined in accordance with law and in accordance with such directions as this Honourable Court may deem meet.
3. Such declaration(s) of the legal rights and/or legal position of the Applicant and/or persons similarly situated and/or of the legal duties of Respondent as the Court considers appropriate.
4. A declaration that s.50B of the Planning and Development Act 2000, as amended, (the '2000 Act') and/or that s.3, s.4, and s.7 of the Environmental (Miscellaneous Provisions) Act 2011 and/or Order 99 of the Rules of the Superior Courts applies in respect of the costs of this application.
5. Such further or other order as this Honourable Court may deem fit.
6. The costs of these proceedings."

Grounds of challenge

33. The core grounds of challenge are as follows:

- "(1) Domestic Law Grounds
 1. The decision of the Respondent, An Coimisiún Pleanála (the 'Commission'), made on 24 July 2025 (reference no. ABP-320786-24) (the 'Impugned Decision') to refuse the Applicant's application for permission to install a shipping container underground for the storage of pyrotechnics and to carry out all associated ancillary site works on lands at Rathoma, Killala, County Mayo is invalid in that the Commission erred in its interpretation of the Mayo County Development Plan 2022 to 2028, specifically Objective EDO 54, further particulars of which are set out in Part 2 below.
 2. The Impugned Decision is invalid in that the Commission made a material error of fact in the characterisation of the proposed development as other than rural enterprise and/or other than dependent on its locality in a rural location, further particulars of which are set out in Part 2 below."

The council's decision

34. The council refused the application for reasons expressed more widely than being contrary to EDO 54:

"The Planning Authority issued a Notification of Decision to REFUSE permission on the 15th of August 2024 for 1 no. reason as follows -
Having regard to the rural location and the nature and scale of the proposed development and the objectives of the Mayo County Development Plan 2022-2028, in particular Objective EDO 54 regarding commercial development in a rural area, the lack of sufficient justification for the provision of a pyrotechnics storage facility at this location, and the surrounding pattern of development in the area, it is considered that the proposed development would represent haphazard sporadic development in a rural area, would be contrary to the objectives of the Mayo County Development Plan 2022-2028 to only permit commercial development in a rural area where there is a proven need to locate therein and would seriously injure the amenities, or depreciate the value, of property in the vicinity. The proposed development therefore would be contrary to the proper planning and sustainable development of the area."

35. The council did not, for whatever reason, comment on the appeal.

The inspector's rationale

36. The inspector reasoned as follows on this issue (emphasis added):

"Principle of Development

6.2.1. The crux of the decision of the Planning Authority, as set out in its **single reason** for refusal, is that there is **no justification for the proposed development in a rural location, and that the proposal would be haphazard, injurious to the amenity of the area and would devalue property in the vicinity.**

6.2.2. In response, the appellant contends that the proposed development **requires a rural location in order to achieve separation distances required under regulations governing the storage of explosives**, and cites examples of other types of development which, whilst not rural in nature, are optimally located in rural locations due to practical constraints which would arise in urban areas, should they be sited there. The appellant also states that the proposal would not adversely affect the amenity or value of property given its location relative to the closest dwelling, and that no adverse impacts on Natura 2000 Sites would arise as a result of the proposed development.

6.2.3. Policy in relation to rural enterprise is set out in Objective EDO54 of the Mayo County Development Plan 2022 - 2028. Objective EDO54 provides for the facilitation of rural enterprises and resource development that are dependent on being located in the rural area. **Compliance with Objective EDO54 firstly requires that the development under consideration is a 'rural enterprise' and/or 'a resource development', and then subject to meeting these criteria, requires the proposed development to be dependent on a rural location.**

6.2.4. The basis of the appellant's case is that a rural location would allow the proposed development to meet specific regulatory requirements in relation to the storage of explosives, specifically the achievement of separation distances from houses and roads. While I acknowledge that **the achievement of these separation distances would be more easily met within a rural area the fact remains that the proposed development is neither a rural enterprise or a resource development, and therefore the proposed development does not meet the formative requirement(s) of Objective EDO54. In my opinion the auxiliary requirement of Objective EDO54, that being the requirement for the proposed development to be dependent on a rural location, is moot given that former element(s) have not been met.** The appellant makes reference to examples of uses which it states are not rural in nature but yet are referred to in Objective EDO54 as being acceptable in rural areas, i.e. extractive industries, solar and wind developments, due to the fact they benefit from a rural location and the appellant contends that the proposed development should similarly be considered on this basis. Aside from the need to be located a specific distance from certain receptors, the proposed development does not have a need to be located in a rural area, and is not reliant on any specific rural based resource. In my opinion extractive industries, solar and wind developments are not comparable with the storage of pyrotechnics. For example, extractive industries only operate where aggregates arise. Solar developments are compatible with agricultural practices and allow for grazing beneath arrays. Wind developments often require upland locations to avail of wind speeds which are more typically higher in rural upland areas. It is reasonable in my opinion for a development plan objective to facilitate these uses in a rural area and whilst the appellant does not contest this, **to draw comparisons to a storage facility for pyrotechnics as needing to be located within a rural area on the basis of meeting licencing requirements cannot be sustained in my view.**

6.2.5. In summation, it has not been demonstrated that the proposed development is a rural enterprises and/or a resource development, or that it is dependent a rural location. The proposed development would therefore not accord with the requirements of Objective EDO 54 of the Mayo County Development Plan 2022 - 2028. I recommend that permission is refused on this basis."

The impugned decision

37. The impugned decision provides as follows:

"Decision

REFUSE permission for the above proposed development in accordance with the reasons and considerations set out below.

Reasons and Considerations

Having regard to the rural location and the nature of the proposed development, the Commission was not satisfied that the applicant had demonstrated that the proposed pyrotechnics storage facility at this location was justified and the proposed development would be contrary to the objectives of the current County Development Plan, specifically Objective EDO 54, to facilitate rural enterprises, and resource development that are

dependent on their locality in rural locations. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

38. This is not hugely explanatory in itself and must be construed as essentially following the inspector’s logic.

Preliminary issues

39. The parties’ positions on preliminary issues as recorded in the statement of case are summarised as follows:

“Respondent’s Position

20. The Commission contends (at §4 of its Statement of Opposition and §3 of its submissions) that the matters raised by the Applicant in these proceedings, in both core grounds, while pleaded in other terms, involve the Applicant’s disagreement with the decision by the Commission in concluding that the Proposed Development is not a rural enterprise and/or is not dependent on being located in a rural area and/or does not come within Policy EDO 54 of the Mayo County Council Development Plan 2022-28 (‘CDP’). This is a disagreement on the merits, dressed up in legal language, which is not a basis for relief in judicial review.

21. The Commission also relies (at §3 of its Statement of Opposition, §3 of its submissions) on the presumption of validity and contends the Applicant has not discharged the onus of proof.

Applicant’s Position

22. The Applicant rejects the contention that the matters raised involve no more than disagreement with the application of the CDP. The Applicant’s case is that the Commission misinterpreted the CDP, specifically Objective EDO 54, and made material errors of fact. The interpretation of a development plan is a question of law and is not an exercise of planning judgement reviewable only on rationality grounds. The presumption of validity does not insulate the Impugned Decision from scrutiny where it is shown to rest on a misinterpretation of the CDP and material errors of fact.”

40. As regards the preliminary issues raised, the commission’s attempt to rebuff the challenge as a merits disagreement is a misunderstanding. The key issue is interpretation of the plan. Given the proposed order below, the commission can apply the plan as so interpreted to the facts on remittal.

Domestic law issues

Core ground 1 – misinterpretation of CDP

41. Core ground 1 is:

“1. The decision of the Respondent, An Coimisiún Pleanála (the ‘Commission’), made on 24 July 2025 (reference no. ABP-320786-24) (the ‘Impugned Decision’) to refuse the Applicant’s application for permission to install a shipping container underground for the storage of pyrotechnics and to carry out all associated ancillary site works on lands at Rathoma, Killala, County Mayo is invalid in that the Commission erred in its interpretation of the Mayo County Development Plan 2022 to 2028, specifically Objective EDO 54, further particulars of which are set out in Part 2 below.”

42. The parties’ positions as recorded in the statement of case are summarised as follows:

“Core Ground 1

Applicant’s Position

24. The Applicant’s position is that the Impugned Decision is invalid in that the Commission erred in its interpretation of the CDP, specifically Objective EDO 54. The Inspector and the Commission parsed Objective EDO 54 to comprise separate conjunctive requirements: a ‘formative’ or primary requirement that the development constitute ‘rural enterprise’ or ‘resource development’, and an ‘auxiliary’ or secondary requirement of dependency on a rural location. The Inspector concluded that the dependency requirement was ‘moot’ and so was not considered.

25. The Applicant contends that, construed properly, Objective EDO 54 commits to facilitate enterprise that is dependent on locality in rural locations, of which rural enterprises, resource development and renewable energy are the principal kinds. The phrase ‘that are dependent on their locality in rural locations’ is a central element of the Objective and cannot be treated as secondary or dismissed as ‘moot’.

26. The Applicant further contends that the CDP must be read as a whole, including paragraph 4.4.8 (which recognises that the rural economy ‘extends beyond’ traditional sectors to include ‘all aspects of the economy’), Policy EDP 19 (supporting indigenous industry and business start-ups), and Objectives EDO 55 and EDO 56 (supporting rural entrepreneurship and micro-businesses). The Applicant also contends that Objective EDO 54 does not contain any prohibition on kinds of development that are not listed, and that the Inspector and Commission were wrong to conclude that the proposed development

would be contrary to Objective EDO 54, or that it was necessary for the Applicant to justify the location by reference to rural enterprise or resource development separately from dependency on rural location.

Respondent's Position

27. The Commission's interpretation of Policy EDO 54 – i.e. that it comprises separate requirements, (a) that the development in question comprises a rural enterprise, resource development or renewable energy resource and (b) that the development in question is dependent on its location in a rural area– is correct. The Commission accepts that EDO 54 is not to be interpreted as if it is a provision of statute, and that points (a) and (b) are related, and that for example, in considering whether a particular development involves a rural enterprise, it is relevant to consider whether it is dependent on its location in a rural area. The Inspector's analysis is consistent with this interpretation and accordingly no error of interpretation arises.

28. With reference to the Applicant's claim that 'construed properly, Objective EDO 54 commits to facilitate enterprise that is dependent on locality in rural locations, of which rural enterprises, resource development and renewable energy are the principal kinds', this is an incorrect interpretation of the Objective. This interpretation flies in the face of the ordinary meaning of the wording of the objective, which commits to facilitate 'rural enterprises, and resource development... and renewable energy resources' that are dependent on their locality in rural locations (emphasis added). Further, the underlined use of the word 'rural' must be given meaning, and the Applicant's interpretation would be to empty that word of meaning. Further, contrary to the Applicant's claims, a holistic reading of the CDP does not require the underlined use of the word 'rural' to be emptied of meaning; any broadening of the meaning of the underlined use of 'rural' should include e.g. home working, digital hubs per §4.4.8 of the CDP, but not a pyrotechnics storage facility.

29. Further, the Applicant's claim that EDO 54 does not contain any prohibition on kinds of development that are not listed is not consistent with a correct interpretation of this objective: correctly interpreted, the objective means that only proposed development of enterprises/resource development/renewable energy resources that come within the types of developments identified in the Objective will be facilitated.

30. Without prejudice to the foregoing, if the Inspector did err in his interpretation in the manner alleged by the Applicant (which is denied), this is a harmless error in circumstances where inter alia the Inspector, as well as considering the question of whether the Proposed Development was a rural enterprise, also considered the question of whether it was dependent on its location in a rural area, and concluded that it was not (and the Applicant has not challenged this conclusion other than by way of the claim of material error of fact which is without merit on the basis set out below)."

43. Section 4.4.8 of the CDP 2022-2028 (<https://www.mayo.ie/getmedia/db6f18d0-73c2-463f-a6cc-5b1186762a48/Vol-1-Written-Variation-No-1.pdf>) is as follows (emphasis added):

"4.4.8 Rural Economy

Mayo is a rural county, with much of its population rural-based and the majority of the land in the county is in agricultural / forestry use. Construction, engineering, manufacturing, quarrying, tourism related services, transport, energy production, forestry, agriculture, food, education, waste disposal and health are all significant areas of employment in the rural areas of County Mayo. The Council recognises, however, that **rural-based employment extends beyond these traditional rural sectors to include all aspects of the economy**. A national strategic outcome of the NPF is 'Strengthened Rural Economies and Communities'. Rural areas play a key role in defining our identity, in driving our economy and our high quality environment and are part of the county's strategic development during the plan period.

In addition to the natural resources and food sector as traditional pillars of the rural economy, improved connectivity facilitating home working and digital hubs, broadband and rural economic development opportunities offer the potential to ensure our rural area remains and strengthens as a living and working community. Local Development Companies are important collaborators with Mayo County Council on rural economic development through their work with the LEADER Rural Development Programme and other rural based programmes.

Rural Economy Policies

EDP 19 To support, in conjunction with Mayo LEO and other agencies, the development of **indigenous industry and business start-ups** in rural employment centres (villages and settlements) in the county, subject to compliance with siting, design and environmental considerations.

EDP 20 To support the implementation of the new LEADER Rural Development Programme 2014-2020, and any subsequent amended/updated programme for the county.

Rural Economy Policies [this appears to be a misprint for objectives]

EDO 54 **To facilitate rural enterprises**, and resource development (such as agriculture, agri-food sector, agri-tourism, commercial fishing, aquaculture, rural tourism, forestry, bio-energy, the extractive industry, recreation, cultural heritage, marine enterprise sector, research and analysis) and renewable energy resources (such as wind/solar/ocean energy) **that are dependent on their locality in rural locations**, where it can be demonstrated that **the development will not have significant adverse effects on the environment**, including the integrity of the Natura 2000 network, residential amenity or visual amenity. Where proposals demonstrate measures to promote environmental enhancement through improved ecological connectivity, such as measures in the Pollinator Plan, additional native species planting or blue and green infrastructure measures, these will be favourably considered.

EDO 55 To support **rural entrepreneurship and the development of micro businesses** (generally less than 10 no. employees) in rural areas, where environmental and landscape impact is minimal and such developments do not generate significant or undue traffic. This objective shall not apply to sites accessed from the National Road Network.

EDO 56 To support **remote working in the rural area**, at an appropriate scale, for enterprise/businesses that do not require visiting members of the public, subject to normal planning considerations."

44. Sometimes people quibble that public bodies have no function in statutory interpretation but that is misconceived and unworkable. All public law entities of necessity must interpret the legislation they are required to apply, and make any legal or factual findings required to carry out their functions.

45. Insofar as Browne says at 12-883 of *Simons on Planning Law* that "An Bord Pleanála does not have jurisdiction to decide other than simple questions of law", I am afraid that I can't agree. There is no logical or legal basis for that. Any decision-taker has to decide any questions of fact or law necessary for their decision subject only to procedural exclusivity (for example, the commission doesn't have jurisdiction to declare government policy documents or legislation invalid although if rigorous criteria are met they may need to disapply such matters in favour of EU law).

46. Furthermore, the suggestion in *Simons* is unfortunately not workable anyway because there is no special bespoke theory of law for the commission alone – a version of the restricted railroad ticket good for this journey only. The "simple points only" theory would have to apply throughout the public sector. Decision-making would quickly grind to a halt on that basis.

47. Even more fundamentally, the notion of what is a "simple question of law" is hopelessly subjective. Lawyers (I include judges) are conditioned to regard the questions of law they deal with as highly complex. You don't need to be Sigmund Freud to appreciate some of the reasons for that. In the case of practitioners, the incentive to characterise questions as complex also has an economic overlay – something that has now been institutionalised in the Planning and Development (Costs of Part 9 Judicial Review Proceedings) Regulations 2026 (S.I. No. 200 of 2026) – no doubt a topic for interesting debates to come. And yet very few cases are that complex in the end – most boil down to the application to particular facts of well-established legal principles. Innovative theories are normally stillborn but every once in a while the law does develop in some tangible way. However let's not fool ourselves – this is not the norm.

48. The fact that the commission has power to refer questions to the High Court does not mean that it is obliged to do so or even that it is a good idea to do so. My own view for what it is worth is that generally that procedure is highly inefficient. A far preferable approach is what is apparently referred to in military terms as "completed staff work" – namely that in any hierarchical system, when one tier is presenting something for potential review by the next tier, it should be a complete piece of work. Edwin C. Bliss describes it thus in his classic work on time management, *Getting Things Done* (Revised ed., London, Warner Books, 1991), p. 110:

"It is believed that the idea originated with Napoleon, and it is a standard operating procedure in just about every modern army, navy, and air force in the world.

In a military context, the idea is that under no circumstances does the chief of staff go into the commanding general and say 'General, here is the problem we face. What would you like us to do about it?'"

49. The commission are familiar with the principle because that's what they get from the inspectorate – a complete draft decision including proposed conditions – but the notion applies to trial courts just as much to administrative bodies. So the most helpful thing the commission or any administrative body can do is to address all issues that are necessary for the decision and come up with a completed piece of work. Stopping half way to ask questions just unleashes another lengthy process (for good measure, one not subject to any procedural streamlining such as applies to

planning decisions under s. 50) which, at its conclusion, leaves the original process incomplete and needing to be picked up again from a standing start. The fundamental point for present purposes is the existence of this procedure does not mean that the administrative body cannot decide complex questions of fact or law. The exception is where asking the question will have the effect of speeding matters up. This arises in particular with a reference to the CJEU. If that is likely at some point, it is often quicker to do it straight away rather than force everybody through two or three tiers of the domestic legal system first.

50. While acknowledging that planning decision-takers can and must decide questions of law, including complex ones, the interpretation of the plan – like any legal point – is ultimately a matter for the court, and such decisions by public bodies are in a sense working interpretations rather than settled answers, until the courts are called upon to get involved.

51. We can now turn to the commission's reasons for rejection:

- (i) "Having regard to the rural location and the nature of the proposed development" – that does not tell us very much about the reason for refusal in this particular context – the rural location was the reason proposed by the applicant why permission should be *granted*, and presumably the location and nature of the development are relevant in every case.
- (ii) "the Commission was not satisfied that the applicant had demonstrated that the proposed pyrotechnics storage facility at this location was justified". Any proposal could be rejected on the basis that the applicant for permission has not demonstrated that the application was justified.
- (iii) "and the proposed development would be **contrary to the objectives** of the current County Development Plan, specifically Objective EDO 54, to facilitate rural enterprises, and resource development that are dependent on their locality in rural locations" – this is where the problem of interpretation erupts.
- (iv) "The proposed development would, **therefore**, be contrary to the proper planning and sustainable development of the area." – if words mean anything this is not a further reason, it is a consequence of the foregoing.

52. 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 decided that a planning decision-taker is required, where it relevantly arises, to address the text of development plans and interpret them where required, and enjoys a zone of evaluative judgement in relation to development plan provisions that involve flexibility. Here we don't get beyond the first step because the commission's interpretation was incorrect. Any valid evaluation can only arise on a correct interpretation, so if and insofar as the correct application of the plan involves some (not excessively wide) margin of evaluation, that can be addressed by the commission on remittal.

53. The core problem is the conceptualisation of the application as contrary to objective EDO 54. This unfortunately is a complete misinterpretation of the plan – albeit one shared by all of the statutory actors here.

54. The simple reason this is fundamentally flawed is that **EDO 54 does not prohibit anything**. It simply gives policy support to a particular type of development. Other types of development are given policy support by other plan objectives. If a development falls outside EDO 54 all that means is that it does not get support from that particular objective, but it may do so from other plan provisions. The whole notion of being "contrary to" EDO 54 is fundamentally misconceived.

55. For example, objectives EDO 1 to 28 support economic development in the county generally: "EDO 1 To facilitate and support the continued growth of the economy in the county in a sustainable manner and in accordance with the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy.

EDO 2 To support and facilitate the economic development of the county in a manner which is consistent with the economic pillars identified in the Enterprise and Investment Units Economic Strategy.

EDO 3 To continue to promote the county to attract enterprise and investment into Mayo through the Enterprise & Investment Unit and/or Local Enterprise Office, with a focus on a number of established and emerging sectors including tourism, manufacturing, marine, renewable energy, ICT, food and agri-food.

EDO 4 To continue to support new and existing enterprises in the county through the provision of training, mentoring, financial supports, advice and networking events.

EDO 5 To encourage enterprise and employment development to locate in brownfield sites or unoccupied buildings in town centres or where appropriate in existing industrial/retail parks or other brownfield industrial sites in preference to undeveloped zoned or unzoned lands.

EDO 6 To facilitate the economic development of Mayo to create a viable and favourable economic environment for business and enterprise, whilst delivering sustainable jobs, employment opportunities and an enriched standard of living for all.

EDO 7 To identify and promote a range of locations within the County for different types of enterprise activity including international business and technology parks, small and medium enterprises (SME) and micro enterprise centre.

EDO 8 To co-operate with local and national development agencies and engage with existing and future employers in order to maximise job opportunities in the County.

EDO 9 To encourage and facilitate home-based start up enterprises of appropriate type, size and scale, subject to compliance with the criteria outlined in 5.10 of Volume 2 (Development Management Standards) of the Plan, and where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity.

EDO 10 To work in partnership with relevant stakeholders, to ensure that a sustainable approach is taken to enterprise development and employment creation across all sectors of the Mayo economy, in accordance with the Green Economy national frameworks relevant to each sector.

EDO 11 To engage with all relevant government stakeholders, enterprise agencies and sectoral representatives in pursuing 'green' approaches to economic development and actively collaborate with key industry and educational bodies to promote Mayo based initiatives across the economic sectors.

EDO 12 To promote quality employment and residential developments in proximity to each other in order to reduce the need to travel.

EDO 13 To encourage the provision of 'live work' communities, in which employment, residency and sustainable transport facilities are located in close proximity to each other, to reduce long distance commuter trends and congestion, as well as reducing outward migration from the county.

EDO 14 To ensure that people intensive developments are located close to the strategic public transport network.

EDO 15 To address the rate of out bound commuting, with the provision of 'live work' communities in strategic settlements served by sustainable transport, thereby improving quality of life, encouraging volunteerism and community engagement.

EDO 16 To encourage mixed use settlement forms and sustainable centres, in which employment, residency, education and local services / amenities are located in close proximity to each other.

EDO 17 To work with Irish Water and other infrastructure providers, to support the provision of services and facilities to accommodate the future economic growth of the County and to seek to reserve infrastructure capacity for employment generating uses.

EDO 18 To ensure that there is sufficient quantum of zoned lands to facilitate a range of enterprise across the county in line with the settlement hierarchy.

EDO 19 To support start-up businesses and small-scale industrial enterprise at appropriate locations throughout the County, subject to the principles of proper planning and sustainable development.

EDO 20 To further linkages and partnerships with GMIT including the branding of the area as a centre of excellence in the knowledge-based economy.

EDO 21 To encourage and facilitate indigenous industries, at appropriate locations with good communication infrastructure, in recognition of their increasing importance in providing local employment and helping to stimulate economic activity within small communities.

EDO 22 To support the use of town centre and other suitable locations for new service focused enterprises.

EDO 23 To support the continued development of Galway Mayo Institute of Technology (GMIT), Castlebar Campus including the development of a shared approach to enterprise development with the Local Enterprise Office.

EDO 24 To acquire suitable land (subject to the availability of funding), including, where appropriate, disused sites in State ownership, for creative and innovative entrepreneurial initiatives and the provision of clustered incubator units.

EDO 25 To promote the development of the key strategic employment sites identified in the Economic Development Strategy for County Mayo.

EDO 26 To support and promote the equine industry in the County as an economic and employment provider.

EDO 27 To work with Eirgrid, as far as practicable, to ensure power infrastructure is available for the development of zoned employment lands within the N5 corridor.

EDO 28 To review the Development Contribution Scheme."

56. The commission is correct (submissions para. 30) that EDO 54 does not operate “to facilitate the types of development identified within the Objective, but also to facilitate any other type of development, as long as this does not prevent or prejudice the Council from facilitating rural enterprise”. It is not EDO 54 that facilitates other development but other objectives, plan text, and national and regional policy. EDO 54 applies to what it applies to, but it does not exhaust the economic policies of County Mayo. That does not “empty the Objective of all meaning and render it futile” as submitted, any more than would arise in any other policy area where there are multiple instruments, none of which are totally exhaustive.

57. In fairness to the commission and the inspector, this confusion originated with the council’s wording. The council came up with the following:

“it is considered that the proposed development ... would be contrary to the objectives of the Mayo County Development Plan 2022-2028 to only permit commercial development in a rural area where there is a proven need to locate therein ...”

58. This is a textual hallucination. The plan does not “only permit commercial development in a rural area where there is a proven need to locate therein”. No clause of the plan is quoted because none exists.

59. If the commission’s use of “in particular” were to be suggested as covering the plan overall, that would be an untenable interpretation given that EDO 54 is the only text engaged with, and its language is used by both the inspector and the commission in this context.

60. With the background of that fundamental confusion in mind, we can now turn to why the commission’s engagement with that particular objective was flawed, although not entirely so because the inspector’s *basic* interpretation is quite correct. Contrary to the applicant’s submission, objective EDO 54 *does* involve a cumulative test:

- (i) the objective applies to projects that are either (a) rural enterprises or (b) resource development or (c) renewable energy resource;
- (ii) projects must be dependent on their locality in rural locations; and
- (iii) in addition it should be demonstrated that the development will not have significant adverse effects on the environment.

61. The inspector’s application of this test was:

- (i) this is not a rural enterprise; and
- (ii) locality-dependency was “moot” but the inference is that it did not appear to be satisfied.

62. Opposing parties tend to see everything as evaluation, but evaluation presupposes a correct interpretation. The analysis here is not the application of a correct test to particular facts because it involves further more detailed questions of interpretation. Those are in essence:

- (i) does the concept of “rural enterprise” mean (a) enterprises that serve the rural community or are suitable for a rural location or (b) enterprises that in effect “have a need to be located in a rural area, [or are] reliant on any specific rural based resource”; and
- (ii) does the concept of “dependent” on locality in rural locations include (a) cases where the conditions for the development are more easily met in rural locations as opposed to (b) only cases where they “have a need to be located in a rural area, [or are] reliant on any specific rural based resource”?

63. In broad terms:

- (i) as to (i) the inspector did not define “rural enterprise” but seemed to conflate the test with the concept of dependency on being located in a rural area (option (b)); and
- (ii) as to (ii) the inspector goes for interpretation (b).

64. Contrary to *Sherwin*, the inspector and commission did not actually interpret the plan provision. One can infer from the discussion what interpretation they appear to have taken but it is certainly not clearly articulated. The commission’s submissions here obliquely acknowledge the lack of an actual interpretation (emphasis added):

“11. The Commission accepts that this Development Plan provision is not to be interpreted as if it is a provision of statute, and that points (a) and (b) (described in the sub-heading above paragraph 6, above) are related, and that for example, in considering whether a particular development involves a rural enterprise, it is relevant to consider whether it is dependent on its location in a rural area, i.e. that this is a factor (**but not the only factor**) that is relevant in considering whether a particular enterprise constitutes a ‘rural enterprise’. The Inspector’s analysis is **consistent with this**.”

65. “Consistent with this” seems to mean that the commission have thought about it after the event and come up with a wording into which the decision can be fitted. “Not the only factor” also seems to mean that they have re-interpreted the decision, but without specifying what the other factors are.

66. Unfortunately, applying the test in *Re XJS Investments Ltd.* 1986 WJSC-SC 1935, [1986] I.R. 750, [1987] I.L.R.M. 659 (McCarthy J., *nem. diss.*), I consider that interpretation (a) is the appropriate one in both cases for the following reasons.

67. On the first question, the development plan itself does not define rural enterprises but states that "The Council recognises, however, that rural-based employment extends beyond these traditional rural sectors to include all aspects of the economy." With such a statement immediately preceding the policies and objectives at issue, the only reasonable interpretation of "rural enterprise" has to be reasonably consistent with this ("all aspects of the economy"). To interpret "rural enterprises" as requiring necessarily inherent rurality renders the qualification about locality-dependency otiose and duplicative.

68. Rural enterprise can't mean owned by rural dwellers, as that contradicts the objective nature of planning law (for example, such a firm could be sold immediately following the grant of permission).

69. It clearly does include enterprises that serve the needs of the rural community, but the overall text of the plan has the implication that it is not limited to that.

70. The numerous references in the plan to home working for example must constitute rural enterprise if the plan is to be read as a coherent whole.

71. So the best interpretation is that rural enterprise is enterprise serving a rural area or otherwise appropriate for such an area. That does involve a degree of evaluative judgment.

72. As the applicant points out, EDO 54 should be viewed as part of a coherent whole with EDO 55 and EDO 56 which situate the concept of rural entrepreneurship in the overall economy (micro-businesses, remote working, etc.) rather than being completely conditioned by rurality. Likewise EDP 19 is relevant insofar as it refers to supporting indigenous industry and business start-ups.

73. Development plans are not statutes, and this is a particularly loosely drafted provision. Any interpretation of such a clause runs the risk of creating some duplication. But the meaning that best accords with the text, context and purpose is to give "rural enterprise" and "dependent" different meanings – the former relating to contribution to the rural economy in some way. We will turn to the latter shortly.

74. If rural enterprise means (as the inspector in effect held) enterprise that needs to be located in a rural area, that renders the second limb of the test totally duplicative and otiose. A broad reading of "rural enterprise" keeps the duplication to the minimum and also accords better with the context and purpose of the objective.

75. The commission's reading would also exclude many rural economic activities that have plan support from EDO 54 and from the notion of rural enterprise generally.

76. The fact that EDO 54 gives examples does not have the implication that other matters are not included. The wide variety and mix of the examples precludes any rigid interpretation based on *noscitur a sociis*.

77. Insofar as the commission submits that "only proposed development of enterprises/resource development/renewable energy resources that come within the types of developments identified in the Objective will be facilitated", this is ambiguous. If it means that only enterprises meeting the cumulative criteria above are covered by the objective, then that is correct. If it means that only enterprises coming within the named examples are covered, then that is incorrect. That reading would contradict the term "such as" which is used twice in the objective.

78. As a final footnote on this topic, the Irish statute book does not furnish much material in terms of a definition of rural enterprise, but my thinking on this issue was assisted by a look at international material, particularly one New South Wales instrument, the Bellingen Local Environmental Plan 1990 (<https://legislation.nsw.gov.au/view/whole/html/1999-12-24/epi-1990-0080>) that includes the following definition:

"rural enterprise means an industry or other business which, by virtue of its nature, the service provided or the products produced, distributed or sold, is in the opinion of the council appropriately located in a rural zone."

79. This is helpful by analogy, taking it for what it is (to state the obvious).

80. So we can now turn to the issue of dependency which the inspector held meant that the enterprise *needs* to be located in a rural area.

81. Nietzsche proposed that „Alles ist Nothwendigkeit"/ "everything is necessity" (*Menschliches, Allzumenschliches/ Human, All Too Human* (Chemnitz, Ernst Schmeitzner, 1878), §107), but literal readings are at one's own risk at the best of times, and are supremely perilous in his case. I interpret his statement as meaning that things are more necessary than we like to admit – which is in this context a reasonable riposte to the inspector's comments.

82. The most striking thing about the inspector's notion is that the concept of "need to be located in a rural area" makes the test for the application of the objective extremely restrictive – far more so than anything arising from the wording, context or purpose. Very little can be said to *need* to be located in a rural area. Taking some examples:

- (i) there can be agriculture in the city – e.g. market gardening, or city farms;
- (ii) there can be wind turbines in urban or industrial areas, e.g. there are many on the Thames east of London (anecdotally and for transparency, in my own encounters with them they seemed to make no discernible noise at all above the ambient urban baseline); and
- (iii) there can be solar farms in cities on rooftops or otherwise – Spain’s largest urban solar farm is across a group of cemeteries (https://environment.ec.europa.eu/news/requiem-power-project-valencia-2024-2024-08-26_en).

83. Forestry and outdoor rural recreation maybe meets the “need to be located in a rural area” test but such a test would render EDO 54 very vestigial in its application. This would also contradict the wide introductory context about all aspects of the economy.

84. In that context and bearing in mind that the purpose of the provision would be rendered largely nugatory by a “need” test, the term “dependent” should be read in a sense of drawing support from or being facilitated by a rural location as opposed to some form of *sine qua non*.

85. This is the vernacular use of the term “dependent”, which does not normally connote an absolute need but some relationship whereby that which is depended on assists and facilitates that on which it is dependent. An employer might depend on a particular worker but that doesn’t imply absolute necessity – she can make do without the worker if that arises.

86. Having regard to the foregoing, a project that is significantly more suited to a rural as opposed to an urban area is capable of being regarded as dependent on a rural location even if that falls short of some absolute need. Such a project is also capable of meeting the test for being a rural enterprise by virtue of being an enterprise suitable for a rural area.

87. Contrary to the respondent’s submission, the core of the challenge is not merits-based, it is plainly one of legal interpretation of the plan. That interpretation does leave some room for evaluation but not unlimited room.

88. Insofar as the commission say any error of interpretation is harmless because the locality-dependency issue is not challenged, that reads the challenge too narrowly. It is acceptably clear that the finding on this issue *is* challenged, albeit perhaps largely phrased as an error of fact. I would accept that there is an error but would characterise it as one of interpretation. Relief should not be refused on the basis of such a somewhat debateable characterisation on the pleadings if the point is acceptably clear, as it is here.

89. The application of the plan, correctly interpreted, to the facts, will be a matter for remittal. That said, I am far from clear as to what the planning objection to this proposal is other than what the council said was “haphazard” development – which presumably implies it should be somewhere else. But where? I appreciate the commission may say that’s not their problem. But the planning policy point remains that if this site is deemed unsuitable, it must be on the basis of a theory that involves either a conclusion that this is not a suitable development full stop for some as yet unidentified reason, or that it could be suitable in some other type of location on a logic that is also unidentified. In a more normal case one might suggest engagement with the council’s planning department, but it is not clear that this would achieve anything given the kitchen-sink nature of their rejection, including the dreaded spectre of property price depreciation, happily not something that spooked the commission on appeal. No doubt the commission can address all matters that require to be addressed on remittal. The problem with the property-price argument is that it compares the particular project not with the practical alternative but with some fictional perfect solution which doesn’t exist. Assuming for the sake of argument that this project will depress property prices on adjacent lands (which is denied), the alternative to storing fireworks here is storing them somewhere else which will presumably depress property prices there instead. All that is significant is the marginal increase in adverse effect of choosing this location – but in fact a rural location is much more likely to reduce any such effects than increase them, which is presumably why the commission were not having any of that particular argument.

90. Ultimately the problem is that if our society wants fireworks, they have to be stored somewhere. In general, the best place to keep dangerous materials is the middle of nowhere – that applies to anthrax on Gruinard Island in Scotland, underground nuclear storage (something we may need to get used to eventually if the underlying problem of runaway demand for energy cannot be curbed), or infectious disease specimens – as in the underground lab in Michael Crichton’s *The Andromeda Strain* (New York, Knopf, 1969). The council classified this development as “commercial” with the implied suggestion that it could be in an industrial estate or the like. That unfortunately misses the point that storage of dangerous matter is not just any old commercial development. If this was in an industrial estate, and an explosion occurred, other structures could be damaged causing severe economic loss not to speak of personal injury. If it was in an isolated area that would be much less likely to be the case. One doesn’t need to be Michael Crichton to conceive a planning and development-themed science fiction plot whereby, say, an infectious disease lab was refused

permission for location in a rural area due to not being a rural enterprise, and relocated to an urbanised area near a wet market. The real inflection point of such a genre of Planning Noir will arise if a project involving storage of dangerous materials relocates to a more urbanised area, and if there is an accident causing collateral damage, at which stage we will find out if planning decision-takers come forward to take ownership. The rejection of this application by the council on grounds of being "commercial" could give rise to the potential for anxiety that the real problem with the proposal is its unfamiliarity, rather than anything that arises from deeper engagement with the particular trade-offs arising in this type of context.

Core ground 2 – alleged error of fact

91. Core ground 2 is:

"2. The Impugned Decision is invalid in that the Commission made a material error of fact in the characterisation of the proposed development as other than rural enterprise and/or other than dependent on its locality in a rural location, further particulars of which are set out in Part 2 below."

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

"Core Ground 2

Applicant's Position

31. The Applicant's position is that the Impugned Decision is invalid in that the Commission made a material error of fact in the characterisation of the proposed development as other than rural enterprise and/or as other than dependent on its locality in a rural location. The Inspector concluded the proposed development was not rural enterprise and that dependency was 'moot'; the Commission does not demur from those conclusions.

32. These are material errors of fact: the Applicant is a mobile pyrotechnics business providing specialised services for multiple weekly events nationwide, including large-scale arts, music, sporting and corporate events, and its business supports rural tourism, recreation and cultural heritage. The proposed storage facility is necessary for the long-term sustainability of the business. The business supports rural tourism, recreation and cultural heritage, all matters listed within Objective EDO 54 among the examples of rural enterprise the CDP commits to facilitate.

33. Further, the supplies required for the business are Hazard Type 1 explosives which must be licensed for storage under Section 7 of S.I. No. 804 'Stores for Explosives Order 2007'. Table 3 of Schedule 4 requires a separation distance of 229 metres to the nearest road or other building. These regulatory constraints mean that the proposed development could not meet licensing requirements in an urban location and, as a practical matter, must be located in a rural area. The Inspector and Commission were wrong to conclude that the proposed development is not dependent on its locality in a rural location.

Respondent's Position

34. The Applicant's claims that the Commission's findings that (a) the Proposed Development is not a rural enterprise and (b) the Proposed Development is not dependent on being located in a rural area constitute material errors of fact are without merit:

35. Firstly, these alleged facts are not questions of fact but questions of evaluative judgement and therefore not amenable to a finding of material error of fact.

36. Secondly, these alleged facts are not objectively verifiable. There is no method of objectively or definitively determining whether the Proposed Development (a) is a rural enterprise, or (b) is dependent on being located in a rural area.

37. Thirdly, these alleged facts are not uncontentious. Regarding [*sic*] the question of whether the Proposed Development is a rural enterprise, the Applicant and the Commission disagree on this point and therefore it is contentious. In the case of the question of whether the Proposed Development is dependent on being located in a rural location, the Applicant (on the one hand) and the Commission and the Council (on the other hand) disagree on this point, and therefore it is contentious.

38. Fourthly, there is no mistake by the Commission on either of these points, and the Commission relies in this regard on §6.2.4 of the Inspector's Report. Further, with specific reference to the claim that the Commission materially erred in fact by finding that the Proposed Development is not dependent on being located in a rural area, the Commission notes that the planning authority concluded, in the Planning Report, that '[t]here is insufficient justification for the proposed development to be at this rural location'. Further, it is not even clear that the Applicant is now definitively stating that the Proposed Development is definitively dependent on location in a rural area: '[t]he prospect of acceptance in a residential or industrial area must be low' (§30 of Applicant's submissions). Further, with reference to the matters set out at §34 above, these are classic arguments against the merits of the Inspector's findings on the issue of dependency on rural location, which cannot give rise to relief."

93. This does not add a whole lot to the previous point and does not call for further discussion, other than to emphasise that contrary to what the commission might be taken to be suggesting, not everything can be collapsed into evaluation. There has to be a correct interpretation of the plan first, and evaluation only gets going within whatever scope is afforded by that correct interpretation. We don't get to that point in this case. The real issue is not error of fact but unduly restrictive interpretation of the plan.

Summary

94. For the avoidance of doubt, preambular matters prior to the first heading of this judgment, and the following summary, do not take from the operative parts of the judgment and must be read in a sense consistent with those. In outline summary, therefore:

- (i) it is settled law that planning decision-takers should engage with the plan and correctly interpret it;
- (ii) applying such law to the facts here, the commission did not in fact clearly interpret the plan, but insofar as its decision involved interpretation, it incorrectly viewed EDO 54 as precluding developments not within its terms and/or it incorrectly adopted a test of necessity for both limbs of the objective ("rural enterprise" and dependency on a rural location);
- (iii) it is settled law that evaluative judgement in the application of an instrument only arises on the basis of the relevant instrument as properly interpreted; and
- (iv) applying such law to the facts here, we do not get to the point of evaluative judgement due to the unduly restrictive approach taken to the interpretation of the plan.

Order

95. For the foregoing reasons, it is ordered that:

- (i) there be an order based on relief 1 claimed in the statement of grounds by way of an order of *certiorari* by way of application for judicial review quashing the decision of the respondent, An Coimisiún Pleanála, made on 24 July 2025 (reference no. ABP-320786-22) to refuse the applicant's application for permission to install a shipping container underground for the storage of pyrotechnics and to carry out all associated ancillary site works on lands at Rathoma, Killala, County Mayo;
- (ii) in accordance with O. 103 r. 36(1)(a) RSC, the matter be remitted to the commission at a point prior to the inspector's report to reconsider the appeal in accordance with this judgment;
- (iii) there be an order for costs (including reserved costs and the costs of written submissions) to the applicant against the respondent;
- (iv) any issue as to the extent of such costs be determined, in default of agreement, by way of legal costs adjudication; and
- (v) for the avoidance of doubt, the order for costs shall include an order for the costs of legal costs adjudication.