

**THE HIGH COURT
JUDICIAL REVIEW
PLANNING & ENVIRONMENT**

**Record No. 2023 377 JR
[2026] IEHC 412**

IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

BETWEEN

JOHN FOX

APPLICANT

and

**WICKLOW COUNTY COUNCIL,
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE,
MINISTER OF STATE AT THE DEPARTMENT OF HOUSING, LOCAL
GOVERNMENT AND HERITAGE**

-and-

OFFICE OF THE PLANNING REGULATOR

RESPONDENTS

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JUDGMENT OF MR JUSTICE DAVID HOLLAND DELIVERED 30 JUNE 2026.

INTRODUCTION¹

1. The Applicant, (“Mr Fox”) is a farmer and landowner of Sunnybank Farm, The Downs, Co. Wicklow. These proceedings relate to the planning policy status of about 1.2 ha, comprising about half a field, in that farm. I will refer to that 1.2 ha as “Mr Fox’s Lands”. They lie on the western edge of the developed area of Willowgrove – which is the northern part of Kilpedder – Willowgrove village. For local planning policy purposes, and since at least 2013, the development boundary of that village has run along the eastern boundary of Mr Fox’s Lands. Mr Fox’s Lands are thereby outside the development boundary. Immediately inside it lies the “Downhill Woods” housing estate in Willowgrove. The undisputed premise of the case is that the prospect of planning permission for residential development on Mr Fox’s Lands is appreciably increased or decreased depending whether they are inside or outside the development boundary. Mr Fox emphasises that he intends three houses for his children on the lands.

2. Though the term “zoning” appears frequently in the papers, this case is not, strictly, about zoning – it is about a village development boundary for development plan settlement strategy purposes. However, the various analyses in the statutory process understandably consider both types - zoning and development boundaries – together, almost as if interchangeable, as they raise similar issues. Kilpedder – Willowgrove village is, for development plan settlement strategy purposes, a “Level 7 Villages (Type 1)” settlement.² Lands in Level 7 Settlements are not zoned.³ Rather, they are enclosed by settlement development

¹ Headings are for general navigational purposes only. They are not determinative of content.

² See Development Plan Chapter 4.

³ See Development Plan Table 3.5 fn 12.

boundaries to identify the areas within the settlement and distinguish them from rural areas. Such settlements are described in the Wicklow County Development Plan 2022-2028 (the “Development Plan”) in the following terms,⁴

“These are rural villages that have a moderate level of existing infrastructural services, both physical and social, and that are of such a size as to accommodate a moderate amount of new housing. These settlements generally have a population of less than 500, with many considerably smaller. These settlements provide a range of local community services and facilities including for example a church, primary school, shop, community hall, sports ground, pub and post office. These villages are an important focal point for rural communities. In order to safeguard their continued existence into the future, it is important that growth is managed in a sustainable manner.

.....

In these settlements it is essential that growth is supported while also strictly managed so that development is undertaken in a manner that is respectful to the character of these villages, their infrastructural capacity and the environmental sensitivities of the rural area.

The scale of new residential development should be in proportion to the scale, pattern and grain of the existing village. Expansion of the village should be commensurate within the existing village structure and should proceed on the basis of a number of well integrated sites including infill sites within and around the village centre rather than focusing on one very large site. In order to facilitate commensurate growth, any individual scheme for new housing should not be larger than 10 units.”

3. For the avoidance of doubt, Mr Fox’s Lands have never been zoned for development. Nor have they ever been within the Kilpedder - Willowgrove village development boundary. Cutting a very long story short, the Elected Members of the Council made the Development Plan including Mr Fox’s Lands within the Kilpedder - Willowgrove village development boundary, but the Minister⁵ by direction issued pursuant to s.31 PDA 2000⁶ to Wicklow County Council (“the Council”) - the Planning and Development (Wicklow County Development Plan 2022-2028) Direction 2023 (the “Impugned Direction”) - in effect amended the Development Plan, inter alia, excluding Mr Fox’s Lands from the area within the Kilpedder - Willowgrove village development boundary. In these proceedings, Mr Fox seeks to overturn the Impugned Direction.

STATUTORY SCHEME

4. The statutory scheme within which a Ministerial Direction pursuant to s.31 PDA 2000 is made is highly iterative and complex. It has been described in cases such as, recently, **Mount Salus**⁷ and **FoIE/DAA**.⁸ I will not repeat the exercise save to set out the relevant statutory provisions and observe that they require, sequentially, multiple administrative processes and the generation of multiple documents. Significantly, it is common case that the Minister’s jurisdiction to make a direction is proximately contingent on his agreement with an OPR recommendation that he should do so, which recommendation is made pursuant to s.31AN(4) PDA 2000.

⁴ What follows here is part only of the description in the Development Plan.

⁵ I will refer to the Second and/or Third Respondents collectively as the “Minister”.

⁶ Planning and Development Act 2000 as amended.

⁷ Mount Salus Residents v An Bord Pleanála, Minister for Housing, OPR & Smyth [2025] IEHC 14, [2026] IECA 28.

⁸ Friends of the Irish Environment v Minister for Housing, Fingal County Council, OPR & DAA [2025] IECA 128.

S.31 PDA 2000

- (1) *Where the Minister is of the opinion that—*
- (a) *a planning authority, in making a development plan, ... has failed to—*
 - (i) *implement a recommendation made to the planning authority by—*
.....
 - (II) *the Office of the Planning Regulator under section 31AM ...*
 - (b) *in the case of a plan, the plan fails to set out an overall strategy for the proper planning and sustainable development of the area,*
 - (ba) *a plan is not consistent with—*
 - (i) *the national and regional development objectives set out in the National Planning Framework and the regional spatial and economic strategy,*
 - (ii) *specific planning policy requirements specified in guidelines issued by the Minister under subsection (1) of section 28,*
 - (c) *the plan is not in compliance with the requirements of this Act, or*

....

then, subject to compliance with the relevant provisions of sections 31AM and 31AN the Minister may in accordance with this section, for stated reasons, direct a planning authority to take such specified measures as he or she may require in relation to that plan.

- (2) *Where the Minister issues a direction under this section the planning authority, ... shall comply with that direction and*
- (3) *Before he or she issues a direction under this section, the Minister shall, ... issue a notice in writing to a planning authority consequent on a recommendation being made to him or her by the Office of the Planning Regulator under section 31AM(8)*
- (4) *The notice referred to in subsection (3) shall, for stated reasons, inform the planning authority of—*
- (a) *the forming of the opinion referred to in subsection (1),*
 - (b) *the intention of the Minister to issue a direction (a draft of which shall be contained in the notice) to the planning authority to take certain measures specified in the notice in order to ensure that the plan is in compliance with the requirements of this Act and sets out an overall strategy for the proper planning and sustainable development of the area,*
-
- (7) *No later than 2 weeks after receipt of the notice issued by the Minister under subsection(3), the chief executive of the planning authority shall publish notice of the draft direction in at least one newspaper circulating in the area of the development plan or local area plan, as the case may be, which shall state—*
- (a) *the reasons for the draft direction,*
 - (b) *that a copy of the draft direction may be inspected at such place or places as are specified in the notice during such period as may be so stated and*
 - (c) *that written submissions or observations in respect of the draft direction may be made to the planning authority during such period and shall be taken into consideration by*

the Office of the Planning Regulator before it makes a recommendation to the Minister on the matter.

(8) the chief executive shall prepare a report on any submissions or observations received under subsection (7)(c) which shall be furnished to the elected members of the planning authority, the Office of the Planning Regulator, the Minister and, where relevant, the regional assembly concerned.

(9) The report referred to in subsection (8) shall—

(a) summarise the views of any person who made submissions or observations to the planning authority,

.....

(d) make recommendations in relation to the best manner in which to give effect to the draft direction.

(16) Where paragraph (a) of section 31AN(4A), ... applies to a matter to which this section relates, then the Minister shall issue a direction accordingly.

(17) The direction issued by the Minister under subsection (16) is deemed to have immediate effect and its terms are considered to be incorporated into the plan

....

(19) As soon as may be after a direction is issued to a planning authority under subsection (16), the planning authority shall make the direction so issued available for inspection by members of the public, during office hours of the authority, at the offices of the authority, and may also make the direction available by placing it on the authority's website or otherwise in electronic form.

(20) The Minister shall—

(a) make available on the website of the Department of Housing, Planning and Local Government a direction under subsection (16), and

(b) otherwise publish or cause to be published in such manner as he or she considers appropriate directions issued under subsection (16).

S.31AM PDA 2000

(1) The Office⁹ shall evaluate and assess, at least at a strategic level—

.....

(b) a notice and a copy of the draft development plan sent to the Office by the planning authority

(d) a notice given to the Office by a planning authority under section 12(7)(a), together

⁹ i.e. the OPR.

with the proposed amendment that would, if made, be a material alteration of the draft development plan concerned,

.....

and the Office may make such observations or submissions for the purposes of the relevant provision.

(2) In assessing and evaluating any requirement to which subsection (1) relates, the Office shall endeavour to ensure that, where appropriate, it addresses the legislative and policy matters relating to development plans as follows:

(3) In making observations or submissions ... the Office shall—

- (a) make to the relevant planning authority such recommendations in relation to the Office's evaluation and assessments as it considers necessary to ensure effective coordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions, and*
- (b) send to the Minister a copy of any such observations or submissions, together with any recommendations made.*

(4) The report of the chief executive of the planning authority prepared for the elected members under—

- (a) section 11(4), in respect of the preparation of a new development plan,*
- (b) subsection (4) or (8) of section 12 in respect of a draft development plan, or*

.....

shall—

- (i) summarise the issues raised in the observations or submissions, including recommendations, made by the Office in relation to the Office's evaluation and assessments under subsection (1),*
- (ii) outline the recommendations of the chief executive in relation to the manner in which those issues and recommendations should be addressed, taking account of the proper planning and sustainable development of the area, and*
- (iii) make the report available on the website of the planning authority as soon as practicable following submission to the members of the authority.*

.....

(6) A planning authority shall notify the Office within 5 working days of the making of a development plan and send a copy ... and where the planning authority—

- (a) decides not to comply with any recommendations made in the relevant report of the Office, or*
- (b) otherwise make the plan in such a manner as to be inconsistent with any recommendation made by the Office,*

then the chief executive shall inform the Office accordingly in writing, which notice shall state reasons for the decision of the planning authority.

(7) Where paragraph (a) or (b) of subsection (6) applies, the Office shall consider whether or not the development plan as made, or the variation of it, by the planning authority is, in the Office's opinion, consistent with any recommendations made by the Office

(8) *Where subsequent to any consideration for the purposes of subsection (7), the Office is of the opinion that—*

- (a) the development plan or the variation of it, as the case may be, has not been made in a manner consistent with the recommendations of the Office,*
- (b) that the decision of the planning authority concerned results in the making of a development plan, or its variation, in a manner that fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, and*
- (c) as a consequence of paragraphs (a) and (b), the use by the Minister of his or her functions to issue a direction under section 31 would be merited,*

then the Office shall issue, ... a notice to the Minister containing—

- (i) recommendations that the Minister exercise his or her function to take such steps as to rectify the matter in a manner that, in the opinion of the Office, will ensure that the development plan, or the development plan as varied by the planning authority, sets out an overall strategy for proper planning and sustainable development, and*
- (ii) a proposed draft of a direction to which paragraph (c) would relate.*

(9) *A copy of the notice issued to the Minister under subsection (8) shall be made available by the Office on its website.*

S.31AN PDA 2000

(1) *The Minister shall consider the recommendations of the Office in the notice issued under section 31AM and—*

- (a) where the Minister agrees with that notice, then the Minister shall proceed, pursuant to section 31, to issue a notice for the purposes of subsections (3) and (4) of that section having taken account of the proposed draft direction submitted by the Office, or*
- (b) where the Minister does not so agree with the Office, then the Minister shall—*
 - (i) prepare a statement in writing of his or her reasons for not agreeing,*
 - (ii) cause that statement to be laid before each House of the Oireachtas, and*
 - (iii) as soon as practicable, make that statement available on the website of the Department of Housing, Planning and Local Government.*

(2) *As soon as practicable after a statement has been prepared under subsection (1)(b), the Minister shall cause a copy of it to be sent to the Office, the planning authority concerned and, where relevant, the regional assembly concerned and the Office and that authority shall, as soon as practicable thereafter, make it available on their respective websites.*

(3) *Where the Minister issues a notice under section 31 for the purposes of subsections (3) and (4) of that section—*

- (a) the notice shall specify that the report of the chief executive on the submissions on the draft direction shall be made to the Office, and*
- (b) the chief executive shall act accordingly.*

(4) *The Office shall consider the report of the chief executive on the submissions, together with any submission made under section 31(10), and shall, no later than 3 weeks after receipt of that report—*

(a) *recommend to the Minister that he or she issue the direction with or without minor amendments, or*

(4A) *The Minister shall consider a recommendation of the Office under subsection (4)(a) that he or she issue a direction with or without minor amendments and—*

(a) *where the Minister agrees with the recommendation, the Minister shall, ... issue the direction under section 31 with or without minor amendments, or*

(b) *where the Minister does not so agree with the recommendation, then the Minister shall —*

(i) *prepare a statement in writing of his or her reasons for not agreeing, ...*

RELIEFS SOUGHT

5. Mr Fox seeks reliefs, by way of judicial review, inter alia as follows:¹⁰

- a. Certiorari quashing the Impugned Direction either generally or insofar as it affects Mr Fox's Lands or bears on the zoning thereof in the Development Plan.
- b. If necessary, certiorari quashing any amendments to the Development Plan effected by the Impugned Direction and/or any consequential steps taken by the first Respondent, Wicklow County Council (the "Council"), on foot thereof insofar as it affects Mr Fox's Lands or bears on their zoning in the Development Plan.
- c. If necessary, certiorari quashing the Development Plan to the extent required to ensure that the zoning of Mr Fox's Lands accords with law and/or is reinstated as per the Development Plan as initially adopted by the Elected Members of the Council on 12 September 2022, which took effect on 23 October 2022.
- d. A Declaration that the Development Plan, as adopted on 12 September 2022, shall have full force and effect as it relates to the zoning of Mr Fox's Lands.
- e. An order pursuant to Section 50A(9) PDA 2000 declaring to be invalid or quashing the part or parts of the Development Plan as amended by the Impugned Direction which the court finds to be invalid.
- f. A Declaration, that the Impugned Direction and/or the accompanying Statement of Reasons dated 21 February 2023 (the "Statement of Reasons") are unlawful, void and in breach of s.31 PDA 2000, in

¹⁰ I have edited what follows without affecting meaning. I have listed only the reliefs at real issue.

consequence whereof any subsequent decision and/or actions taken on foot thereof are unlawful and void.

6. As will be seen, the claim for reliefs repeatedly and by misnomer, refers to the “zoning” of Mr Fox’s Lands. Correctly, no one took issue with this and I interpret the references as being to the inclusion of the lands in, or their exclusion from, the area within the development boundary of Kilpedder - Willowgrove village.

CORE GROUNDS & PART-DECISION OF GROUND 2

7. The Core Grounds pursued by Mr Fox in asserting the invalidity of the Impugned Direction as unlawful and in breach of s.31 PDA 2000 were refined at trial. Core Ground 1, literally, reads as follows.

- **Core Ground 1: failure to provide adequate reasons for the decision to reinstate Amendment V1-11(a) (Kilpedder- Willowgrove).**¹¹

8. As discussed at trial, Core Ground 1 is, in the literal sense, misconceived. The effect of the Impugned Direction was not to reinstate the Amendment V1-11(a) but the opposite - to excise it from the Development Plan. For all that, reading the Statement of Grounds as a whole, it is readily clear that Mr Fox’s complaint was of its excision, not its reinstatement. What the Impugned Direction in fact reinstated was the development boundary envisaged in the Draft Development Plan. It had been changed by the cited amendment to put Mr Fox’s Lands inside the development boundary. All agreed at trial, sensibly in my view, that this was the true intent of the complaint made in Core Ground 1 and that it should be understood accordingly. I will therefore reword it as follows:

- **Core Ground 1: failure to provide adequate reasons for the decision to excise Amendment V1-11(a) (Kilpedder- Willowgrove) from the Development Plan as made by the elected members of the Council such that, in the Development Plan, the Kilpedder – Willowgrove development boundary reverts to that envisaged in the Draft Development Plan.**

9. Core Ground 2 was pleaded as follows:

- **Core Ground 2: irrationality and/or disproportionality and/or failure to take account of relevant considerations and/or overreach of the legislative intent of s.31 PDA 2000 in that it represents a disproportionate interference in the democratic representation of the elected members of the Council as enshrined by Article 28A of the Constitution.**

¹¹ I have edited for brevity without altering meaning.

10. The word “representation” is perhaps not quite apposite here. I read it as “role and powers” or the like. In any event, little turns on that. Towards the end of the trial counsel for Mr Fox, in my view wisely given **Conway**,¹² stopped only slightly short of formally abandoning Ground 2 as it related to Article 28A and disproportionality. He accepted that he had not pressed the assertion (which had been pleaded on the basis that Amendment V1-11(a) represented a minor planning matter in the context of the overall Development Plan) that the Impugned Direction represented Ministerial overreach as a disproportionate interference in the democratic role and powers of the elected members of the Council as enshrined by Article 28A of the Constitution. In any event and as will be seen, the Minister was explicitly concerned not merely with the locally isolated effect of including Mr Fox’s lands within the development boundary but with its precedential effect and with its effect cumulatively with other zoning and development boundary extensions reversed by the Impugned Direction.

11. Ultimately, counsel limited his reliance on Article 28A to a generalised assertion, supporting his case as to Ground 1, that its constitutional recognition of the status of local government amplified the requirement that the Minister give reasons adequate to the importance of a decision overturning the Elected Members’ democratically-made Development Plan. I accept that proposition in a general sense. However, whether that ultimately makes any difference to the outcome on the facts of this case is a different matter.

12. Neither did counsel pursue a pleaded assertion of unjust attack on Mr Fox’s constitutional rights of property or a pleaded assertion of material error of fact - correctly in my view.

13. Counsel for Mr Fox acknowledged that this is, in the end, a “reasons” case. I agree. I agree both given the focus of the arguments at trial and also as I consider that Ground 2 presented, as it related to Article 28A and disproportionality and in the matter of legal argument, a very steep hill for Mr Fox to climb and counsel sensibly didn’t really make the attempt.

14. While this disposes of most of Ground 2 I will return to it having decided Ground 1.

IMPUGNED DIRECTION - 21 FEBRUARY 2023

15. The Impugned Direction issued on 21 February 2023. It reads as follows:

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Wicklow County Development Plan 2022 - 2028

¹² Conway v. An Bord Pleanála [2024] IESC 34.

"Development Plan" means the Wicklow County Development Plan 2022 - 2028

"Planning Authority" means Wicklow County Council

WHEREAS

*the Minister at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Act, and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AN(4) of the Act*¹³

HEREBY DIRECTS AS FOLLOWS:

(1) *This Direction may be cited as the Planning and Development (Wicklow County Development Plan 2022 - 2028) Direction 2023.*

(2) *The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:*

(a) *Reinstate the following settlement boundaries and zoning objectives to that of the draft Plan:*

(i) *Amendment V1 -11 (a) (Kilpeddar- Willowgrove), i.e. the settlement boundary reverts to the draft Plan.*

(ii) *Amendment V1 -13 (Johnstown) i.e. the settlement boundary reverts to the draft Plan.*

(iii) *Amendment V2 - 103 (Carnew) i.e. the settlement boundary reverts to the draft Plan and the subject land reverts to unzoned from RN- New Residential and O\$1 Open Space.*

(b) *Delete the following zoning objectives from the settlement zoning map for Aughrim:*

(c) *Delete both Objective CPO7.xx inserted under Amendment V1-31 and associated Map 7.01: To provide for a new nursing home/ residential care facility for the elderly at location shown on Map 7.01*

- *Kilmullen, Newcastle (c.2ha)*

STATEMENT OF REASONS

I. Pursuant to section 31(1)(b), section 31(1)(ba)(i) and section 31(1)(c)¹⁴

The Development Plan as made includes material amendments to the draft Plan, that individually and cumulatively are not consistent with the Core Strategy, national and regional planning policy, and the proper planning and sustainable development of the area, including:

¹³ Emphasis added.

¹⁴ The references here are to provisions of the PDA 2000.

- a) *Land zoned for residential development in the Level 5 settlements of Carnew and Aughrim inconsistent with Core Strategy housing supply targets and settlement hierarchy for Wicklow County in the adopted Plan.*
- b) *Settlement boundary extensions and land zoned for residential development (including for a nursing home/ residential care facility) located in peripheral locations removed from the existing settlement, and in the absence of infrastructure required for such development, inconsistent with the requirements for compact growth in NPO¹⁵ 3c and RPO¹⁶ 3.2, the tiered approach to zoning in NPO 72, the proportionate growth of rural towns in NPO 18(a), and the sequential approach to development having regard to the policy and objective of the Development Plans Guidelines for Planning Authorities (2022) regarding the sequential approach (section 6.2.3).*
- c) *Land zoned for a nursing home/residential care facility in a peripheral and non-sequential location outside of any settlement boundary, and remote from services and amenities, inconsistent with objective CPO 6.32 of the Development Plan in relation to housing for the elderly.*
- d) *Settlement boundary extensions and land zoned for development in locations that would facilitate a pattern of car-dependent development inconsistent with objectives to promote sustainable settlement and transportation strategies.*
The development plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

II. Pursuant to section 31(1)(a)(i)(II) and section 31(1)(a)(ii)(II)¹⁷

The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31AM.

III. Pursuant to section 31(1)(b)¹⁸

In light of the matters set out at I to II above, the Minister is of the opinion that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

IV. Pursuant to section 31(1)(c)¹⁹

In light of the matters set out at I to III, above, the Development Plan is not in compliance with the requirements of the Act”

¹⁵ National Policy Objective of the National Planning Framework.

¹⁶ Regional Policy Objective of the RSES.

¹⁷ The references here are to provisions of the PDA 2000.

¹⁸ The references here are to provisions of the PDA 2000.

¹⁹ The references here are to provisions of the PDA 2000.

STATEMENT OF REASONS - 21 FEBRUARY 2023

16. The Minister, as statute requires, states in the Impugned Direction itself his reasons for the Impugned Direction under the heading “Statement of Reasons”. Naturally, it includes the reasons for the Impugned Direction as it affects Mr Fox’s Lands. The position is a little confusing however as, also on 21 February 2023, the Minister issued a separate document entitled “Statement of Reasons”. It briefly recites that the Minister has issued the Impugned Direction to effect OPR recommendations – listed by reference number only, lands are not specifically mentioned - including that relating to Mr Fox’s Lands. I am satisfied that this list is a contextual recital and that the gravamen of the document relates to the Minister’s decision to reject an OPR recommendation to include in the Impugned Direction a direction which would have affected the Ashford village settlement boundary and zoning objective. Though pleaded, and counsel for Mr Fox tried to make something of it, I do not see that this document is relevant to the issues in the proceedings. In my view, this document is neutral as to the issues in these proceedings: to any extent it might have stated reasons for the Impugned Direction as to Mr Fox’s Lands, it did not do so; to the extent it did state reasons, they do not relate to Mr Fox’s Lands. The reasons for the Impugned Direction as to Mr Fox’s Lands must be found elsewhere.

CHRONOLOGY

17. From November 2019 to January 2020, the Council held an initial public consultation with a view to making a new Development Plan. In June 2020, the Draft Development Plan drafted by the Council executive was published.²⁰ It did not put Mr Fox’s Lands within the Kilpedder - Willowgrove village development boundary. Submissions and observations were invited, to a closing date of 30 August 2021.

18. Mr Fox made a submission²¹ on the Draft Development Plan, requesting the Council to amend the Kilpedder – Willowgrove development boundary to include Mr Fox’s Lands – on the basis that:

- it would be for three houses only;
- *“lands are adjacent to developed areas, would provide infill development;”*
- *“dwellings would be for family members who would qualify for rural housing but would prefer to build adjoining the village.”*
- *“If this is their desired site for the family homes, they may be considered under the rural housing criteria.”*

19. The Council’s Chief Executive reported to the Elected Members on 14 December 2021 on the submissions on the Draft Development Plan – including Mr Fox’s.²² The Chief Executive recommended against Mr Fox’s proposed amendment – considering Mr Fox’s Lands collectively with other similar submissions. As relevant, the report said:

²⁰ accompanied by an SEA (Strategic Environmental Assessment) and AA (Appropriate Assessment).

²¹ Not exhibited. Content recited from WCC CE report December 2021 and Farry submission 16 November 2022 (see below).

²² at p.349 - submission C2-95. Extract exhibited.

“In accordance with national and regional policy, the draft County Development plan is pursuing a compact growth policy whereby settlement boundaries are deliberately defined to manage unnecessary “sprawl” into the open countryside.

.....

Kilpedder – Willowgrove is a small settlement with limited services. There is no school and very limited social amenities serving existing residents, which has been highlighted in previous submissions. The boundary identified in the draft plan includes adequate land to accommodate a moderate level of development.

(of the Fox Submission²³) ... given the reasons outlined in the submission, is not necessary to facilitate family homes for those that qualify anyway for rural housing. If this is their desired site for the family homes, they may be considered under the rural housing criteria. Therefore, no change is warranted or recommended.”

20. At meetings on 28 and 29 March 2022, the Elected Members considered the Draft Development Plan and the Chief Executive’s Report of 14 December 2021. They resolved to amend the Draft Development Plan inter alia, by Amendment V1-11(a)(b) and (c) as to Kilpedder-Willowgrove. Amendment V1-11(a) was to incorporate Mr Fox’s Lands within the Kilpedder - Willowgrove village development plan boundary by extending the boundary west of Downhill Woods.

21. An SEA Screening report and SEA Report on the Proposed Amendments to the Draft Development Plan identified the proposed Kilpedder – Willowgrove amendments, including Amendment V1-11(a), and *“concluded that it would not provide the most evidence-based framework for development and had the potential to undermine sustainable development and proper planning”* and asserted a need to reject them accordingly.²⁴

22. From 27 April 2022 to 25 May 2022, the Proposed Amendments to the Draft Development Plan and the SEA Report were on public view and submissions were invited. A Wicklow Planning Alliance submission concurred with the SEA analysis of, inter alia, Amendment V1-11(a), and sought its rejection.

OPR’s s.31AM SUBMISSION OF 25 MAY 2022 ON PROPOSED AMENDMENTS & MA RECOMMENDATION 3

23. On 25 May 2022, the OPR made a submission *inter alia* recommending, by way of MA Recommendation 3, that the Development Plan be made without Amendment V1-11(a). Thereby it recommended that Mr Fox’s Lands not be brought within the Kilpedder - Willowgrove village development plan boundary.

²³ The reference numbering - C2-9 - is inaccurate but I am satisfied is a typo, as the substantive content refers to the substance of the Fox submission.

²⁴ I do not have the SEA Report but this SEA content is discernible from the CE Report of July 22, p3, 38 & Appendix C, p5.

24. That submission and recommendation were made on foot of its evaluation and assessment, pursuant to s.31AM(1) and (2) PDA 2000, of the Proposed Amendments and pursuant to its power under s.31AM(3) PDA 2000 to make, on foot of such evaluation and assessment, observations, submissions and/or recommendations to the Council, copying the Minister.

25. That submission of 25 May 2022,

- a. expressed concern that proposed amendments would add to the abundance of land already zoned for housing across a range of settlements.
- b. recorded that central and local government agree on focusing housing delivery close to employment, services and infrastructure, maximising opportunities for infill development and consolidation of towns and villages – Town Centre First - and avoiding piecemeal extensions of urban areas that individually or cumulatively may overwhelm local infrastructure and sense of place.
- c. expressed the view that, while many proposed amendments considered individually appeared modest, collectively they appear to counter a focus on the key Wicklow towns. They will tend to reinforce a pattern of scattered and piecemeal development across the county, instead of identifying ways to build up the strong network of rural Wicklow towns and villages from within, by sensitive well-designed and sustainable infill development, re-use of buildings and renewal.
- d. expressed the view that such material amendments are not consistent with national or regional policies in relation to establishing a proper evidence basis for land use zoning objectives, moving towards compact growth and regeneration and away from urban sprawl.
- e. considered, as to some proposed material amendments in respect of changes to settlement boundaries, that a significant portion of the lands are in peripheral locations on the edges of or beyond settlements and often in sensitive locations. This is inconsistent with sequential zoning for residential development as to which guidelines²⁵ require planning authorities to consider first and foremost how to encourage town and village development - starting with their centres before moving outwards in a considered way that results in compact, well-planned, walkable and attractive places.
- f. asserted that material amendments significantly inconsistent and out-of-step with national and regional policy in respect of achieving a sustainable pattern of development included Amendment V1-11(a) (i.e. Mr Fox's Lands) which
 - did not comply with the requirement for sequential development, given its location on the periphery of or detached from the existing built-up area and the extent of preferably located zoned land in these settlements (i.e. Kilpedder-Willowgrove).
 - sets a precedent for further zoning of lands in the vicinity which, taken with MA V1-13 (Johnstown),²⁶ would direct housing growth away from larger and medium tier settlements.

²⁵ Section 4.19 of the Development Plans, Guidelines for Planning Authorities (2007) and section 6.2.3 and SPPR DPG 7 of the draft Development Plans Guidelines (2021).

²⁶ There is a typo at p1q3. The text, literally, considered "MA V-11(a) ..., taken in conjunction with MA V-11(a) ..." I am satisfied from the context that I have correctly understood the intended meaning.

- g. expressed the view that the cumulative effect of Amendment V1-11(a) and others listed results in an incoherent and piecemeal strategy for the proper planning and sustainable development of these areas.
- h. included MA Recommendation 3, themed as to core strategy and settlement strategy.

MA RECOMMENDATION 3

26. Accordingly, the OPR's Submission of 25 May 2022 made "MA Recommendation 3 - Material Zoning Amendments". As relevant, it cites national and regional policy objectives NPO 3c²⁷ and NPO 18a,²⁸ the Development Plans Guidelines²⁹ and s.10(2)(n) PDA 2000 in considering that listed

"settlement boundary extensions and residential zonings proposed under the material amendments are inconsistent with the core strategy and/or contrary to the implementation of compact growth, sequential zoning and the provision of a sustainable settlement and transport strategy.

(i) the planning authority is therefore required to make the Plan without the following material amendments:

- *Amendment V1 – 11(a) (Kilpeddar – Willowgrove)".*

CE REPORT, JULY 2022 & MAKING OF DEVELOPMENT PLAN, 12 SEPTEMBER 2022

27. As required by s.12(8) PDA 2000 and by report dated July 2022, the Chief Executive reported to the Members on the Submissions on the Proposed Amendments to the Draft Plan.³⁰ In accordance with the OPR Submission of 25 May 2022, it recommended³¹ that the Plan be made without Proposed Amendment V1 – 11(a) – i.e. without the inclusion of Mr Fox's Lands within the Kilpeddar - Willowgrove development boundary. As indicated above, it summarised the SEA report and the Wicklow Planning Alliance submission as to Mr Fox's Lands. It also summarised and concurred³² with the relevant content of the OPR's Submission of 25 May 2022. The Chief Executive stated

"Kilpeddar – Willowgrove is a small settlement with limited services. There is no school and very limited local amenities serving existing residents, which has been highlighted in many submissions to the Draft Plan. The boundary identified in the Draft Plan already includes adequate land to accommodate the appropriate level of future development that village can sustain."

²⁷ Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.

²⁸ To support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

²⁹ Development Plans, Guidelines for Planning Authorities (2007) and Development Plans, Guidelines for Planning Authorities - Draft for Consultation (August 2021).

³⁰ At p.26.

³¹ P10 & pp. 38 to 40.

³² P39.

28. On 12 September 2022, the Elected Members made the Development Plan - including Mr Fox's Lands within the Kilpedder - Willowgrove development boundary, thereby rejecting the OPR's and the Chief Executive's recommendations in that regard. On 16 September 2022, the Chief Executive, under s.31AM(6) PDA 2000, notified the OPR that the Development Plan had been made and of the OPR recommendations, including MA Recommendation 3, with which the Elected Members had not complied in making it and of the reasons given by the Elected Members as follows:

- *"Proposed extension to serve 3 members of same family for individual houses on their own land;*
- *No concerns in relation to sight line provision, road frontage and flooding."*

OPR's S.31AM(8) NOTICE & PROPOSED DRAFT DIRECTION – 7 OCTOBER 2022

29. On 7 October 2022, the OPR issued a Notice to the Minister pursuant to s.31AM(8) PDA 2000. It recommended that the Minister issue a draft direction to the Council indicating his intention to direct, inter alia, the reinstatement of the Kilpeddar-Willowgrove development boundary, the subject matter of Amendment V1-11(a), to that of the Draft Development Plan. The effect would be to exclude Mr Fox's Lands from the Kilpedder - Willowgrove development boundary. The s.31AM(8) Notice cited a *"series of individual material amendments to the land use zoning objectives to zone additional land for residential use"* and the OPR's Submission of 25 May 2022, including MA Recommendation 3. The s.31AM(8) Notice, inter alia:

- a. Stated that the OPR had reviewed the CE's reports on the Draft Plan and material alterations to the Draft Plan, the notice of the making of the Development Plan and the Elected Members' reasons for including Mr Fox's Lands within the Kilpedder - Willowgrove development boundary as set out in the s.31AM(6) letter. It recites those reasons.³³
- b. Stated that the OPR is of the opinion that:
 - the Development Plan has not been made in a manner consistent with OPR recommendations. Specifically, it zones land for development in peripheral locations, leapfrogging unzoned and/ or undeveloped land, and in so doing does not apply the sequential approach to development to support compact growth of towns and villages and is not consistent with the objectives to promote sustainable settlement and transportation strategies under s.10(2)(n) PDA 2000.
 - the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
 - a Ministerial direction under s.31 PDA 2000 would be merited.
- c. Repeated MA Recommendation 3 verbatim, having introduced it as having

"required the planning authority to omit a total of four zoning amendments and to make minor modifications to a further four zoning amendments from the draft Plan to manage growth in these respective settlements. The aggregate area relating to the respective zoning amendments amounted to approximately 26 ha."

³³ As set out above.

- d. Repeated the following content of the OPR's Submission of 25 May 2022

"Instead of focusing on building up local communities through sensitive infill development, reuse of existing buildings, these amendments will instead encourage piecemeal additions to sensitive local communities that have access to limited services and infrastructure which is contrary to the obligations on all local authorities to secure compact forms of urban development and contrary to the implementation of sequential and public transport and active travel centred housing delivery locations.

The aforementioned amendments are, therefore, considered to be inconsistent with national and regional policy in respect of compact growth (NPO 3c and RPO 3) and/or with sequential residential zoning under the Minister's Guidelines, the implementation of the core strategy, the proportionate growth of settlements (NPO 18a), and the provision of a sustainable settlement and transport strategy in accordance with section 10(2n) of the Act."

- e. Repeated the CE's recommendation, in accordance with the OPR Recommendation, against Amendment V1 – 11(a) (Kilpeddar – Willowgrove) and the CE's reasons:

"Kilpeddar – Willowgrove is a small settlement with limited services. There is no school and very limited local amenities serving existing residents, which has been highlighted in many submissions to the Draft Plan. The boundary identified in the Draft Plan already includes adequate land to accommodate the appropriate level of future development that village can sustain."

- f. Stated the OPR's view that Amendment V1 – 11(a) (as to Mr Fox's Lands) extends the settlement boundary to include *"undeveloped greenfield land and peripherally located approximately 1.5 km from the Kilpeddar village centre, and outside the CSO boundary."*³⁴ *The lands are located approximately 500 metres west of the access onto the N11."*

- g. Stated the OPR's view that

"In relation to the need for the boundary extension to meet local housing need, Chapter 6³⁵ set out rural housing policy, including the criteria for local housing need (Objective 6.4.1). The scale of the boundary extension would, however, significantly increase the development potential of the lands in a piecemeal manner, and in a location that will contribute to further car-dependent urban sprawl in this area contrary to compact growth and objectives to promote sustainable settlement and transportation strategies under section 10(2)(n) of the Act.

The matters raised in relation to sightlines and road frontage are matters to be considered through the development management process and are not relevant to the Office's consideration of the material amendment. Similarly, the Office raises no concerns in relation to flood risk management. The Office considers that the above reasons do not address the substantive issue in the recommendation concerning this amendment in respect of the peripheral location of the boundary extension and inconsistency with: national and regional policy in respect of compact growth (NPO

³⁴ See below as to CSO boundaries.

³⁵ i.e. of the Draft Plan.

3c³⁶ and RPO 3.2³⁷ of the RSES), the core strategy of the adopted plan, and objectives to promote sustainable settlement and transportation strategies under section 10(2)(n) of the Act.”

- h. Stated the OPR’s view that the Elected Members’ reasons do not satisfactorily address, specifically, MA Recommendation 3 and its non-acceptance of those reasons for not implementing it. Inter alia, it states that

“The adopted Development Plan includes zoning objectives and material amendments to the draft Plan which extend settlement boundaries and zone additional residential land in excess of what is required for Wicklow County as set out in the Core Strategy. These zoning objectives and amendments are located in peripheral and/or non-sequential locations and would encourage a pattern of development in particular locations which is inconsistent with national and regional policy objectives promoting compact forms of development (NPO 3c and RPO 3.2) and which fails to have regard to the policy and objective for a sequential approach to development in the Development Plans Guidelines issued under section 28 of the Act regarding the sequential approach. Furthermore no or no adequate reasons relating to the proper planning and sustainable development of the area have been provided to explain why the guidelines have not been implemented notwithstanding the express obligation on the planning authority under s.28(1A)(b) and 28(1B)(b) to do so. Moreover, having considered the reasons given by the elected members as set out above, the Office remains of the view that provisions of the development plan as made are inconsistent with section 10(2)(n), National Planning Objectives NPO 3(c), NPO 18(a) and NPO 72,³⁸ Regional Policy Objective RPO 3.2, and fails to have regard to the section 28 Development Plans Guidelines and that the inclusion of such provisions, individually and cumulatively means the plan as made fails to set out an overall strategy for the proper planning and development of the area because such zoning objectives and amendments (inter alia)

- *facilitate development in peripheral locations outside the CSO settlement boundaries;*
- *encourage a pattern of development in particular locations not in accordance with the proper planning and sustainable development of such areas, planned and sequential development and the wider provisions of the Core Strategy of the development plan;*
- *zone land for development inconsistent with the strategic environmental assessment of the likely significant effects on the environment; and*
- *facilitate a pattern of car-dependent development inconsistent with objectives to promote sustainable settlement and transportation strategies.*

Further, in making the Development Plan with residential zoning in excess of that determined to be required under the Core Strategy, and in particular in relation to the cumulative effect of zoning in Level 5 settlements, the planning authority has failed to have regard to the requirement under section 4.4 of the Development Plans Guidelines to ensure enough land is zoned and to avoid zoning too much land and the planning authority provides no or no adequate reasons relating to the proper planning and sustainable development of the area to explain why the guidelines have not been followed.”

³⁶ See above.

³⁷ Compact Growth RPO 3.2: Local authorities, in their core strategies shall set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas.

³⁸ Lands that cannot be serviced within the life of the relevant plan should not be zoned for development.

- i. Asserted that the Development Plan
 - *fails the duty imposed by s.10(2A)(d)(ii) PDA 2000 to provide details of how the residential zoning proposals accord with national policy of phased development.*
 - *has not been made in a manner consistent with and, in its opinion under s.31AM(7) PDA 2000, has failed to implement the OPR's recommendations under s.31AM PDA 2000.*
- j. Recommended, inter alia, the reversal by ministerial direction of Amendment V1 – 11(a) (Kilpeddar – Willowgrove) such that the settlement boundary reverts to that depicted in the draft Plan (i.e. excluding Mr Fox's Lands from the settlement area).
- k. Enclosed a Proposed Draft Direction accordingly.

30. I have set out the content of the s.31AM(8) Notice in extenso for the following reasons:

- It issued, officially, as part of the effecting of the iterative statutory scheme as to Ministerial directions.
- It set out and recommended to the Minister the OPR's reasons for what later became the Impugned Direction.
- It is repeatedly cited in later statutory documents as continuing to state reasons for the Impugned Direction.
- It and the OPR's Proposed Draft Direction were published on the OPR's website on 8 November 2022.
- These proceedings comprise, in large part, an assertion of inadequacy of stated reasons for the Impugned Direction.

31. The Development Plan as made by the Elected Members came into effect on 23 October 2022.

CSO SETTLEMENT BOUNDARIES

32. Somewhat out of sequence but given reference to them in the s.31AM(8) notice, I interpose here a note as to CSO settlement boundaries. The CSO publishes population statistics for settlements – see, for example, the National Planning Framework, 2018 Appendix 2. It follows that the CSO must identify boundaries to those settlements. The NPF at NPOs 3a, 3b and 3c seeks to deliver housing in the “existing built-up footprints” of settlements. The NPF clarifies³⁹ that this means within the existing built-up footprint of settlements, as defined by the CSO in line with UN criteria.⁴⁰ Individual or scheme homes outside a CSO settlement boundary are classed as greenfield. For the CSO's statistical purposes, such boundaries are actual, not normative, boundaries. However, that does not prevent their adoption of those boundaries by others, such as in the NPF or in Ministerial Directions, as normative or as relevant to the determination of normative development boundaries for planning purposes. Indeed, given the national planning policy of compact development within existing settlements, such a course is entirely unsurprising.

³⁹ Footnote 17 & 19 - Appendix 4 References.

⁴⁰ i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

MINISTER’S S.31 NOTICE OF INTENTION & DRAFT DIRECTION - 24 OCTOBER 2022

33. By the Minister’s Notice of Intention to Issue a Direction, issued to the Council under s.31 PDA 2000 and dated 24 October 2022, he issued a Draft Direction. By that Notice, the Minister, inter alia,

- a. Pursuant to s.31 PDA 2000.
- b. Explicitly on consideration of and consequent to the OPR’s recommendation of 7 October 2022 (i.e. the s.31AM(8) Notice).
- c. Explicitly having considered the *“CE reports on Draft Plan Consultation and material alterations to the draft Development Plan.”* – including the CE recommendation against Amendment V1 – 11(a) (Kilpeddar – Willowgrove).
- d. Gave notice of his intention to issue a direction to the Council to take specified measures.
- e. Stated that his reasons were *“set out in the Statement of Reasons section of the attached draft Direction and further detail is provided in the Summary of Issues as set out below.”*
- f. Briefly recited the history of the matter to that point – including
 - The OPR’s submission of 25 May 2022
 - *“MA Recommendation 3 – Material Zoning Amendments, relating to residential land use zoning in Kilpeddar–Willowgrove”*
- g. Recited his opinion that elements of the Development Plan as made are inconsistent with national and regional policy objectives specified in the NPF⁴¹ and the RSES.⁴²
- h. Issued a draft Direction pursuant to s.31 PDA 2000 directing, inter alia, the Council to reinstate the Kilpeddar – Willowgrove settlement boundary to that in the Draft Plan.

34. The *“Summary of Issues”* in the Minister’s S.31 notice dated 24 October 2022 included the following as to OPR MA Recommendation 3,

- It recited the Recommendation as relating to amendments to the Draft plan *“considered to be inconsistent with national and regional policy in respect of compact growth (NPO 3c and RPO 3) and/or with sequential residential zoning under the Minister’s Guidelines, the implementation of the core strategy, the proportionate growth of settlements (NPO 18a), and the provision of a sustainable settlement and transport strategy in accordance with section 10(2n) of the Act.”*

⁴¹ National Planning Framework.

⁴² Eastern and Midlands Regional Spatial and Economic Strategy.

- It recorded that the OPR had concluded that the Elected Members' given reasons for rejecting the Recommendation were either not relevant or not grounded in evidence.
- It asserted that those reasons did not address the substantive issue in the Recommendation concerning each amendment in respect of:
 - the peripheral location of the proposed zoning,
 - inconsistency with national and regional policy in respect of compact growth (NPO 3c and RPO 3.2 of the RSES),
 - the core strategy of the adopted Plan, and
 - the provision of a sustainable settlement and transport strategy in accordance with section 10(2)(n) PDA 2000.

35. As relevant here, the Draft Direction was in the terms of the OPR's Proposed Draft Direction. Inter alia, it

- Was explicitly "consequent to" the OPR's s.31AM(8) recommendation.
- Directed, inter alia, reinstatement of the Kilpeddar – Willowgrove settlement boundary to that depicted in the draft Plan – citing Amendment V1 – 11(a).

36. For reasons unclear to me, the Minister published on the Gov.ie website the Draft Direction dated 24 October 2022 but not his s.31 Notice to the Council dated 24 October 2022. As has been seen, he explicitly described the latter as providing further detail of his reasons for the Draft Direction. This is hardly satisfactory. However, on 8 November 2022 the OPR published on its website:

- Its s.31AM(8) Notice & Draft Direction dated 7 October 2022.
- The Minister's s.31 Notice to the Council and Draft Direction dated 24 October 2022.

37. Written submissions or observations on the Draft Direction were invited by public notice under s.31(7) PDA 2000 dated 31 October 2022. It was published by the Council in local newspapers. That notice recited the text of the Draft Direction verbatim – including that it

- Was explicitly "consequent to" the OPR's s.31AM(8) recommendation.
- directed, inter alia, reinstatement of the Kilpeddar – Willowgrove) settlement boundary to that depicted in the Draft Plan – citing Amendment V1 – 11(a).

The public notice also advised that a copy of the Draft Direction might be inspected at Council offices and on its website.

FARRY SUBMISSION, 16 NOVEMBER 2022

38. 14 submissions were made on the Draft Direction - including by Farry Planning Consultants for Mr Fox, dated 16 November 2022. It is clearly thorough and professional. Inter alia, Mr Farry

- a. Recited that the Council is aware that *“it was always understood that housing on this land would be occupied by the landowner’s three children”*.
- b. Asserted that it was *“difficult to identify, with precision, the exact reasons on which this document seeks the de-zoning⁴³ of this tract of land”*. Nonetheless it identified, correctly in my view, the content of the statement of reasons in the Draft Direction referable to Mr Fox’s Lands and responds to each.
- c. Submitted that this small site would not jeopardise the proper planning and sustainable development of the area, or adversely affect the core strategy, or national and regional policy.
- d. Submitted that the Willowgrove - Kilpedder settlement boundary had been unchanged for over twelve years and that there was clearly some scope for additional settlement growth - a *“slightly enlarged settlement”* - and, more generally, a need for additional residential land in Co. Wicklow, particularly given its role in the Greater Dublin Area.
- e. Recited the *“juxtaposition”* of Mr Fox’s Lands with existing residential development and asserted that his Lands form part of the sustainable *“natural extension”* of the existing boundary and would *“assist in the expansion of this village”*, such that houses thereon would *“function and be perceived as part of this village, rather than comprising a feature in the countryside”*. He cited NPO 19 as directing rural housing into villages and the Development Plan Guidelines as to the sequential approach to zoning out from urban centres and close to public transport.
- f. Asserted that low-density houses on Mr Fox’s Lands would counter-balance the current emphasis on apartment schemes, given policy to provide a range of accommodation types.
- g. Asserted that, contrary to the Draft Direction’s assertion of facilitation of car-dependency, Mr Fox’s Lands are *“rather well-served by public transport”* – identifying a bus stop 1.3km away in Kilpedder serving a route to Wicklow town and another, 250m away, serving routes to Dublin and other towns. Mr Farry states that *“Future residents living on the land need not own or use a private car, as this area is adequately served with public transport”*, such that Mr Farry disagrees that residential development of the lands would facilitate a pattern of car dependent housing inconsistent with adopted strategies for the promotion of sustainable development

39. I observe that the planning concept of *“car dependency”* is one of practical behavioural foresight. The question is not whether future residents will need a private car. People choose, and become dependent on, many things they do not “need”. The question is whether future residents will own or use a private car. In context and though a matter for the OPR and the Minister, not me, I cannot see that it was in the least surprising that Mr Farry’s submission in this regard failed to convince.

40. The Chief Executive’s report to the Minister and the OPR, made under s.31(8)&(9) PDA 2000 and dated December 2022, on the submissions on the Draft Direction, set out the Farry Submission in full. It also

⁴³ Sic.

recorded the Elected Members’ surprise at the Draft Direction as the settlement boundary extension for 3 sites was minor, with the sites being close to public transport and easily connected to Greystones for pedestrians. The Chief Executive recommended that the Draft Direction be effected as to Mr Fox’s Lands – though it must be remembered that his statutory power to recommend in this report was limited to how best, not whether, to effect the Draft Direction. This report was never published as, it is said, there is no obligation to publish it. However, it is clear that Mr Farry’s submission to the Council for Mr Fox was, verbatim and in full, placed before the OPR and the Minister.

OPR’s S.31AN(4) NOTICE & PROPOSED DRAFT DIRECTION – 12 JANUARY 2023 & IMPUGNED DIRECTION – 21 FEBRUARY 2023

41. The OPR, as statute required, considered the Chief Executive’s report on the submissions on the Draft Direction. Thereupon, it issued a Notice to the Minister pursuant to s.31AN(4) PDA 2000, dated 12 January 2023, recommending that he issue a Direction – as relevant, in the same form as the Draft Direction. It recited the OPR’s consideration of, inter alia,

- The Minister’s Notice dated 24 October 2022, of Intent to issue a Direction.
- The Chief Executive’s report under s.31(8)&(9) PDA 2000, dated December 2022, on the submissions on the Draft Direction (which had set out the Farry Submission in full).
- The Elected Members’ views – including that the matters raised in the Draft Direction were minor, relating to a very small quantum of zoning with limited housing potential, such that they did not warrant the issuing of the Draft Direction.

42. The OPR stated that

- *It “now recommends, pursuant to section 31AN(4) of the Act that you issue the attached Direction in the same form as the draft Direction. In forming this recommendation, this Office reiterates the submissions made to you in the Notice which issued from this Office to your office on 7th October 2022 pursuant to section 31(AM)(8)”⁴⁴*
- *“As set out in the section 31AM(8) Notice the boundary extensions and zoning objectives in peripheral locations would both individually and cumulatively constitute an approach to the proper planning and sustainable development of lower tier settlements which is inconsistent with national and regional policy for compact growth in NPO 3c and RPO 3.2, the proportionate growth of rural towns in NPO 18(a) and the sequential approach to development having regard to the policy and objective of the Development Plans Guidelines and would facilitate a pattern of car-dependent development inconsistent with objectives to promote sustainable settlement and transportation strategies. Furthermore, the boundary extensions and zoning objectives are inconsistent with the wider provisions of the Core Strategy and zone additional land in circumstances where sufficient land in level 5 settlements has already been zoned in preferable locations.”*

⁴⁴ Emphasis added.

- *“ this approach demonstrates the absence of an overall strategy for the proper planning and sustainable development in the Development Plan and as such warrants the issuing of the draft Direction”*
- *“The statement of reasons in the draft Direction for Part 2(a) relate to the inclusion of material alterations to the draft Plan that individually and cumulatively are not consistent with the Core Strategy, national and regional planning policy, and the proper planning and sustainable development of the area, including the housing supply targets and settlement hierarchy for Wicklow County in the Core Strategy of the adopted Plan, compact growth in NPO 3c and RPO 3.2 and the proportionate growth of rural towns in NPO 18(a), and the sequential approach to development having regard to the policy and objective of the Development Plans Guidelines regarding the sequential approach (section 6.2.3); and objectives to promote sustainable settlement and transportation strategies.”*

43. Specifically as to Material Amendment V1 – 11(a) at Kilpedder-Willowgrove, the OPR stated that

- a. a number of the reasons cited in the submission opposing the draft direction⁴⁵ are similar to the reasons given by the elected members for the decision not to comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:
 - Proposed extension to serve 3 members of same family for individual houses on their own land;
 - No concerns in relation to sight line provision, road frontage and flooding.
- b. *“As set out in the section 31AM (8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive.”⁴⁶*
- c. *“Additional issues raised in submissions⁴⁷ are as follows:*
 - *There is a need for additional residential land generally.*
 - *The site is not environmentally sensitive.*
 - *A low-density development offers an alternative to one-off rural housing. There is a tightening of rural housing test and qualifications.*
 - *Availability of established public transport provision locally.*
- d. *In respect of the need for additional residential land and accepting that such boundary extensions may be warranted and justified in certain circumstances, no evidence-based justification has been provided in this instance to address the CE’s conclusion (CE Report July 2022) that the settlement boundary in Kilpeddar–Willowgrove includes adequate land to facilitate future development and the settlement capacity constraints set out in the CE’s reason for recommending against the amendment.*

⁴⁵ i.e. the Farry Submission for Mr Fox.

⁴⁶ Emphasis added.

⁴⁷ i.e. the Farry Submission for Mr Fox.

e. *The Office notes the point regarding the environmental status of the relevant site, however this is not a reason in itself to zone land or extend settlement boundaries that are otherwise inconsistent with the provisions of the Development Plans Guidelines which promotes the development of settlements in a sequential manner and the avoiding of leapfrogging undeveloped zoned residential land (section 6.2.3 of the Development Plans Guidelines).*

f. *In relation to the site offering low density development as an alternative to one-off housing, the Office notes that the adopted plan includes a policy framework for rural housing in the County which allows for dwellings for a family member/ for family use under specific criteria. Furthermore, the settlement boundary in the draft Plan does facilitate housing and there is no evidence that this land in particular is required to meet housing need in accordance with the Core Strategy.*

g. *In relation to the provision of public transportation, the Office remains of the view that the site is poorly serviced by public transport, with limited services and limited prospects for public transport enhancements during the life of the Development Plan.*

h. *Following consideration of the submissions and CE's Report, there is no basis to amend the recommendation of this Office*"

i. **"Recommendation** *In light of the above and for the reasons given in our notice letter of 7th⁴⁸ October 2022, the Office remains of the view, as set out in the 31(AM)(8) Notice, that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area. Having regard to section 31AN(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction."*

44. Three aspects of the S.31AN(4) Notice are notable in particular: the OPR's

- explicit and particular treatment of the issue of Mr Fox's Lands.
- explicit response to the additional issues raised in the Farry Submissions.
- repeated invocation of and reliance on the content of its s.31(AM)(8) Notice of 7 October 2022.

45. On 21 February 2023, the Minister accepted the OPR's advice as it related to Mr Fox's Lands. Under cover of a letter of that date,⁴⁹ he issued the Impugned Direction. The text of the Impugned Direction is set out above. Here, I note that the Impugned Direction explicitly

- Recites that it is made "consequent to" the OPR's s.31AN(4) Notice.
- Asserts failure to implement the OPR's s.31AM recommendations.

46. The Impugned Direction dated 21 February 2023⁵⁰ was published on the Oireachtas website on 21 February 2023 and on the Gov.ie website on 23 February 2023.⁵¹ The Council

⁴⁸ The Notice says "6th" but that is clearly a typo.

⁴⁹ Which Mr Fox pleads, correctly, does not amplify the reasons for the Impugned Direction.

⁵⁰ and the Statement of Reasons document of the same date - I have explained above why this document is irrelevant.

⁵¹ Affidavit of Claragh Mulhern sworn 19 June 2026.

- published the Impugned Direction on its website.
- made the Impugned Direction available for inspection at its offices.
- amended the Development Plan to effect the Impugned Direction – inter alia by reinstating the settlement boundary at Kilpeddar-Willowgrove to that of the Draft Development Plan, thereby excluding Mr Fox's Lands from Kilpeddar - Willowgrove development boundary.

PUBLICATION – TABLE

47. Mr Fox's case depended appreciably on his assertion that the reasons for the Impugned Direction must be found, and found exclusively and completely, in the Impugned Direction and not in any other document. The parties, at my request, agreed a table setting out when, how and by whom, relevant documents were published. I set out an edited version below:

Document	Publication?		
	Council website/newspaper/inspection ⁵²	OPR website	Gov.ie website
OPR s.31AM(1)&(3) submission on proposed amendments - 25 May 2022	Yes ⁵³ • published on Development Plan Consultation Portal on 25 May 2022 • available for inspection.	Yes ⁵⁴	No
OPR S.31AM(8) Notice & Proposed Draft Direction - 7 October 2022	No (there is no requirement that it be published on the Council's website.)	Yes ⁵⁵ • published 8 November 2022.	No
Minister's s.31 Notice Of Intention to issue draft Direction - 24 October 2022	No		No
Draft Direction - 24 October 2022	Yes ⁵⁶ • published on website on 27 October 2022 • notice published in <i>Wicklow Times</i> on 1 November 2022 and <i>Wicklow People</i> newspapers on 2 November 2022 per s.31(7) PDA 2000.		

⁵² i.e. Available for inspection at Council Main Offices.

⁵³ §11 affidavit of Claragh Mulhern of 7 February 2024, not disputed by the Applicant.

⁵⁴ §11 affidavit of Claragh Mulhern of 7 February 2024, not disputed by the Applicant. Also §12 of the affidavit of Kenneth Moloney of 13 March 2024.

⁵⁵ Accepted at §27 of Mr Fox's submissions. See §12 of Affidavit of Kenneth Moloney of 13 March 2024; §19 of Affidavit of Anne Marie O'Connor of 1 August 2025.

⁵⁶ Accepted at §27 of Mr Fox's submissions.

Document	Publication?		
	Council website/newspaper/inspection ⁵²	OPR website	Gov.ie website
	Available for inspection from 3 to 16 October 2022 (as stated in newspaper notices).		
OPR S.31AN(4) Notice - 21 January 2023	No (there is no requirement that it be published on the Council's website.)	Yes ⁵⁷ published 7 March 2023.	No
Minister's letter - 21 February 2023	Yes ⁵⁸ published on website 21 February 2023.	Yes ⁵⁹ published on the OPR's website on 7 March 2023.	No
Impugned Direction - 21 February 2023	- Available for inspection from 21 February 2023 per s.31(19) PDA 2000. - notice published in <i>Wicklow People</i> newspaper on 22 March 2023.		Yes ⁶⁰ published 23 February 2023.

GROUND 1 – REASONS FOR IMPUGNED DIRECTION

THE PLEA & MR FOX'S POSITION

48. As I have reworded it,⁶¹ Core Ground 1 asserts failure to provide adequate reasons for the decision to excise Amendment V1-11(a) (Kilpedder- Willowgrove) from the Development Plan as made by the Elected Members of the Council, such that, in the Development Plan, the Kilpedder – Willowgrove development boundary reverts to that envisaged in the Draft Development Plan. He asserts breach of s.31 PDA 2000, which requires that the Minister may direct a planning authority to take such specified measures as he or she may require in relation to a plan for 'stated reasons'.

49. Mr Fox pleads particulars as follows:

- a. The Impugned Direction itself fails to provide any adequate rationale for the specific direction as to Mr Fox's Lands. The reasons stated in the Impugned Direction are aggregated and make no specific reference to Amendment V1-11(a) (Kilpedder-Willowgrove). Even at the generic level, the stated reasons do not appear to have any connection with or basis in fact in respect of the said lands.

⁵⁷ Accepted at §27 of Mr Fox's submissions. See §12 of Affidavit of Kenneth Moloney of 13 March 2024; §19 of Affidavit of Anne Marie O'Connor of 1 August 2025.

⁵⁸ OPR Statement of Opposition §13. Accepted at §8 of the affidavit of John Fox of 17 Feb 2025. Accepted at §27 of Mr Fox's submissions.

⁵⁹ Accepted at §27 of Mr Fox's submissions. See §12 of Affidavit of Kenneth Moloney of 13 March 2024; §19 of Affidavit of Anne Marie O'Connor of 1 August 2025.

⁶⁰ Affidavit of Clagh Mulhern sworn 19 June 2026.

⁶¹ See above.

- b. No additional rationale is disclosed in the Notice Letter to the Council's Chief Executive dated 21 February 2023.
- c. As to reliance on the OPR's recommendation as providing reasons, Mr Fox has not had sight of it as it is not publicly available.
- d. In any event, the OPR's recommendation cannot be relied on to supplement defective or deficient reasoning because s.31 PDA 2000 requires the Minister to independently form an opinion that a Direction should issue.

50. Mr Fox cites **McCarthy Meats**⁶² as to the duty to state reasons and Invokes fair procedures in that regard. He asserts that, to the extent particular documents were publicly available on websites, they were not readily available there given website architecture and extent of search required to find the documents.

STATE & OPR POSITION

51. The State and OPR assert that

- a. The stated reasons for the Impugned Direction are adequate.
- b. As the Minister expressly adopted the OPR's recommendations, the adequacy of the Minister's reasons must be evaluated in the context of the entire statutory decision-making process, including the OPR's S.31AM(8) Notice, S.31AN(4) Notice, recommendations, and related documents expressly considered by the Minister in issuing the Impugned Direction. The Minister's reasoning for the Direction may be found in those documents as it is clear that they formed part of the Minister's reasoning (citing **Connelly**⁶³). Mr Fox does not impugn the reasons provided in the s.31AN Notice, the s.31AM Notice and/or the OPR submission on the material amendments and the Minister agreed with those reasons.
- c. Specifically, the Minister pleads that his reasons may be found in the following documents:
 - the Impugned Direction, the Statement of Reasons, and the Minister's letter to the Council - all dated 21 February 2023),
 - the OPR's s.31AN(4) Notice, dated 12 January 2023,
 - the Minister's Draft Direction dated 24 October 2022,
 - the OPR's s.31AM(8) Notice, dated 7 October 2022 (in particular, pages 6-10 and 23-29),
 - the OPR's submission on the Material Alterations dated 25 May 2022 (in particular, pages 13-15, including MA Recommendation 3).
- d. As they relate to Mr Fox's Lands, those reasons (with which Mr Fox does not engage) include concerns regarding their peripheral location, their greenfield status, inconsistency with compact growth

⁶² McCarthy Meats Ltd. v Minister for Housing, Planning and Local Government [2020] IEHC 371.

⁶³ Connelly v An Bord Pleanála [2021] 2 IR 752.

objectives, conflict with NPO 3(c), RPO 3.2, the Development Plan's Core Strategy, and with s.10(2)(n) PDA 2000 as to sustainable settlement and transportation strategies.

e. In substance, Mr Fox's complaint is directed at the form in which the reasons were provided and their location across several documents and in that respect discloses no error in law.

f. Mr Fox's assertions that relevant documents were inaccessible are disputed. Mr Fox has failed to discharge his onus of proof of those assertions. The OPR has adduced uncontested affidavit evidence that the relevant OPR documents were publicly available before these proceedings commenced. Mr Fox's inability to locate documents does not establish that they were unavailable or any legal deficiency in the Direction.

COUNCIL POSITION

52. The Council asserts that

- a. Ground 1 alleges no unlawful act or omission by the Council. The adequacy of the Minister's reasons for the Direction is for the Minister and the OPR, whose submissions the Council adopts.
- b. Of the Chief Executive's report of December 2022,
 - Its content is prescribed by s.31(9) as a summary of views and a recommendation, rather than an assessment of planning merits or express response to issues raised in submissions (contrast, for example, s.12(4)(b)(iii) PDA 2000). It reproduced the Farry Submission in full.
 - The Council furnished it to the Minister and the OPR. The Council was not obliged to publish it (contrast s.31(8), with ss.31(7), 31(19) and 31(20)).
 - It is not a source of stated reasons for the Impugned Direction.⁶⁴
 - Its non-publication is therefore immaterial to the adequacy of the reasons for the Impugned Direction.
- c. The Council published the draft and final Impugned Direction and the Statement of Reasons and made the Impugned Direction available for inspection at its offices.
- d. The reasons for the Impugned Direction may be found across the documentary record (**Connelly**⁶⁵) - which need not be available online - Mr Fox having known which documents were relied upon and having adduced no evidence of any effort to obtain them.

53. In truth, the Council played a minimal role at trial. Counsel for Mr Fox essentially and correctly acknowledged (though it was not quite put that way) that the Council was joined for the sake of proper constitution of the proceedings in that, as all parties agreed, its Development Plan would require consequential amendment were the Impugned Direction quashed.

⁶⁴ Which are in the Minister's letter and the Direction, the Statement of Reasons and the OPR's documents.

⁶⁵ *Connelly v An Bord Pleanála* [2021] 2 IR 752

REASONS – DISCUSSION & DECISION

CONNELLY

54. **Connelly**⁶⁶ is the leading case on the public law of reasons. It makes clear that a participant in a planning process is not a mere passive recipient of decisions in that process as far as concerns the ascertainment of reasons for those decisions. Clarke J, citing **Christian**⁶⁷ and **EMI**,⁶⁸ stated that⁶⁹

- a. It is not necessary that all of the reasons for a decision must be found in the decision itself.
- b. Reasons for a decision must be capable of being identified and ascertained with some degree of precision. Legal certainty requires that it must be possible to accurately determine what the reasons were. There should not be doubt as to where the reasons can be found.
- c. Any materials can be relied on a source of reasons, subject to the important caveat that it must be reasonably clear to any interested party that those materials actually provide reasons which in fact led to the decision. The reasons may be found anywhere, provided that it is sufficiently clear to a reasonable observer, on reasonable inquiry, that the matters in question actually formed part of the reasoning. But were excessive search required, the reasons could not be said to be reasonably clear. Unsurprisingly, whether the search required is reasonable or excessive and whether the reasons are sufficiently clear is considered objectively – **JT**.⁷⁰ That will often be a fact-specific assessment.
- d. As to a document posited as containing reasons, it must be possible to say, beyond real debate, that it actually contains reasons for the decision.
- e. Such a document must either
 - be expressly referred to in the decision - clearly, express reference in the decision itself to some other source outside of the decision document meets the test,or
 - be, by necessary implication from the terms of the decision, clearly adopted by those making the decision as part of its reasoning.
- f. Documents prepared in the context of the decision-making process may, depending on the content, be capable of being relied on as an authoritative statement of the rationale.
- g. In the case of many types of decision the identification of reasons it would be difficult to justify reliance on any document not publicly available - given the potential entitlement of some members of the public who had not participated in the process to challenge a relevant decision. Even if not available online, it could suffice that an interested party had free access to such a document. I add that this is unsurprising as the law of reasons predates the internet and, even now, many statutory provisions

⁶⁶ *Connelly v An Bord Pleanála, Clare County Council & McMahon Finn Wind* [2018] IESC 31, [2021] 2 IR 752.

⁶⁷ *Christian v Dublin City Council* [2012] IEHC 163, [2012] 2 IR 506, p 543.

⁶⁸ *EMI Records v Data Protection Comm* [2013] IESC 34, [2014] 1 ILRM 225, p 250.

⁶⁹ What follows is reworded but preserves the meaning. Clarke J was considering reasons for the adoption of a development plan but the principles stated are clearly general to any administrative law decision.

⁷⁰ *JT v Child and Family Agency* [2025] IECA 189, §71.

provide for public notice of documents by such as newspaper notices advising of the physical (non-electronic) availability of materials for inspection at stated locations such as local authority offices.

h. Where issues are complex, reasons may be complex and detailed. In such a case, a person seeking to ascertain the reasons must engage with that complexity and detail.

55. The application of these principles in Connelly, in a planning process, is illustrative. Clarke J found reasons in further information, including an NIS, which the developer had been required to submit because of reservations expressed by the Board's Inspector. Clarke J said that

"..... the reasons for the Board's development consent decision in this case can, at a minimum, be found in the Inspector's report and the documents either expressly or by necessary implication referred to in it, the s 132 notice and the further information and NIS subsequently supplied, as well as the final decision of the Board to grant permission including the conditions attached to that decision and the reasons given for the inclusion of the conditions concerned."

56. From the foregoing it is clear that, at least in principle, the formalistic argument made for Mr Fox that an OPR-generated document, as it emanates from outside the Minister's department (contrast being drawn with the fact that an inspector's report is internal to the Planning Commission), could not be a source of reasons for the Minister's Impugned Direction is misconceived. If, in Connelly, developer's documents - further information and NIS - could supply reasons for a development consent decision, a fortiori an OPR-generated document generated in the statutory scheme governing Ministerial directions, at least in principle, can supply reasons for the Minister's Impugned Direction.

57. However, even had Connelly not provided the factual analogy, I would have rejected the argument on principle. As Connelly makes clear, a decision-maker is, in principle, free to adopt any document as illuminating its reasons, regardless of authorship. What matters is whether it is clear that the decision-maker has in fact done so and whether the document is reasonably available to interested persons. Where it is expressly done, little doubt arises. Where the question is whether such adoption is impliedly clear, some types of document may more readily attract the inference than others - for example an inspector's report. But the principle can apply to any document. As Clarke J said, reasons can be found anywhere.

58. In **Mount Salus**,⁷¹ as to a Ministerial Direction, it was *"inferred that the Minister agrees with and adopts the OPR's opinions as his own."* In **FoIE/DAA**⁷² it was held that the Ministerial Direction at issue in that case made clear the Minister's reasons having regard, inter alia, *"to the myriad of documents that preceded the decision, notably the various opinions and recommendations of the OPR"* and the Chief Executive's report on the proposed material alterations to the draft development plan.

⁷¹ Mount Salus Residents Owners Management Company v An Bord Pleanála. [2025] IEHC 14, upheld [2026] IECA 28.

⁷² Friends of the Irish Environment v Minister for Housing, Fingal County Council, OPR & DAA [2025] IECA 128.

A CAUTION

59. I should add a caution. It may well be that, in general, it is open to a decision-maker to say, as the Minister said here, that it was not obliged by law to publish a particular document. But where the decision-maker seeks to rely on such a document as providing reasons for its decision, its non-publication may prove fatal to such reliance, regardless whether there was, otherwise at law, an obligation to publish it. Connelly is clear: reasons must be ascertainable. The Minister, on the facts of the case, in this case is very arguably⁷³ reliant on the OPR website to rescue his Impugned Direction as to its disclosure of reasons.

MR FOX'S EFFORTS TO ASCERTAIN REASONS

60. The corollary of the principle that reasons must be sufficiently clear to a reasonable observer, on reasonable inquiry as opposed to excessive search, is that the inquirer must be reasonable and must make reasonable inquiry. The requirement of reasonable inquiry is general. But specifically, if by the decision itself or by his/her participation in the process which led to it, or by reason of his/her access to professional advice, or otherwise, (s)he is put on inquiry, (s)he must make that inquiry. (S)He cannot simply decide that the decision on its face provides inadequate reasons, sit back dissatisfied and do no more. As was said in different context in **Fernleigh**,⁷⁴ **SWI**,⁷⁵ and **ETI/Aughinish**⁷⁶ *"Courts must be alert to any possibility of an approach of not, ... turning over stones for fear of what might be found under them ..."*.

61. Mr Fox deposes merely that:

- At 17 April 2023, he had not seen *"the OPR's submission to the Minister and that he did not believe that this is publicly available"*. This seems to be a reference to the OPR's s.31AN(4) Notice and Proposed Draft Direction of 21 Jan 2023 to the Minister. His belief is incorrect as it was put online by the OPR on 7 March 2023.
- He never saw the relevant webpage on the OPR website of the until the link was provided by the OPR in these proceedings.
- Access to the webpage requires a difficult process *"through a sequence of layered pages within the website. For a member of the public to find this by themselves without the link provided in these proceedings, they would have to be familiar with the structure of the OPR website, which I am not, or at least aware that this information was on the website somewhere that would inspire a hunt for it, which I was not."*

⁷³ I say "very arguably" as in this case I need not decide whether the Minister's reasons, as stated in the Impugned Direction considered in isolation, would have sufficed.

⁷⁴ *Fernleigh Residents Association v An Bord Pleanála* [2023] IEHC 525.

⁷⁵ *Fernleigh Residents Association v An Bord Pleanála* [2023] IEHC 525; *SWI, IFI, Sweetman & Ors v ALAB et al* [2024] IEHC 421. §1036.

⁷⁶ *ETI v ACP & Aughinish Alumina* [2026] IEHC 387.

62. I do not doubt the precise accuracy of Mr Fox’s precise depositions that until particular points in time he had not seen certain documents. But Mr Fox deposes nothing of any efforts he may have made to seek out those documents. Given the citation of the OPR’s recommendation in the Impugned Direction, and while the Minister’s website may have been the obvious first place to look, on failing to find the OPR notices there the next obvious place to look was the OPR website. I find it difficult to believe that, had Mr Farry been asked, he would not have found it in minutes on the OPR website with which, as a professional planner, he would no doubt be well-familiar. But that observation should not be understood as a finding that Mr Fox would have needed professional help to find the documents in question. In any event, I find Mr Fox’s account of the online search of the OPR website needed to find the documents to be, as to the question whether it was “excessive”, mere assertion and unconvincing. That is particularly so as he gives no account whatsoever of any effort he actually made, or had made on his behalf, to find those documents. He might have been better placed to assert that they were excessively difficult to find had he looked for them and failed to find them. Also, as he bears the onus of proof of excessive difficulty, and as between the competing affidavits filed on that issue, I am entitled to and do, on a **RAS Medical**⁷⁷ basis, accept the OPR’s evidence of the absence of excessive difficulty in finding those documents on the OPR website.

63. Further, and as the Impugned Direction refers also to the OPR’s s.31AM Notices which, as we know, included significant critique specific to the extension of the settlement boundary in Mr Fox’s favour, it is noteworthy that Mr Fox deposes no account of his knowledge of those Notices, which were published on the OPR website.

64. I reject, for want of evidence of actual and timely efforts to find them or for want of weighty evidence of the alleged difficulty of negotiating the OPR’s website, the argument that the OPR’s s.31AN(4) and s.31AM Notices were ascertainable only by, as Connelly terms it, excessive search. In that respect, therefore, there is no impediment to their containing reasons for the Impugned Direction.

ARE THE CONTENTS OF THE OPR’S s.31AN(4) AND s.31AM(8) NOTICES AND s.31AM SUBMISSIONS DISCERNIBLE AS CONTAINING REASONS FOR THE IMPUGNED DIRECTION?

S.31AN(4) NOTICE – 21 FEBRUARY 2023

65. Importantly the legal context in which interpretation of the Impugned Direction must be conducted is that, as has been seen, s.31AN(4A) PDA 2000 stipulates that

- the Minister shall consider an OPR s.31AN(4) recommendation that he or she issue a direction and,
- where the Minister agrees with the recommendation, he or she shall issue the direction.

That the Minister must issue a direction in such circumstances is also made clear by s.31(16) PDA 2000.

⁷⁷ RAS Medical v Royal College of Surgeons [2019] IESC 4.

66. It is inherent in the concept of “recommendation” that it will normatively advise the recipient of what the recipient ought to do in the exercise of his/her statutory discretion. So, a recommendation will advise the recipient both what to do and why he/she should do it. In law, the exercise of such a statutory discretion must be reasoned. It follows that a recommendation as to how to exercise such a discretion will, all but invariably – or at very least predictably – propose reasons for the particular decision recommended, which reasons the recipient of the recommendation may or may not adopt, expressly or impliedly. Accordingly and *ceteris paribus*, it is entirely reasonable to expect that a person seeking to ascertain the reasons for an administrative law decision will at least look for them in a recommendation which led to the decision. Whether and to what extent the reasons are in fact found there will vary with the circumstances of the particular case.

67. As to a Ministerial Direction however, the case that reasons for it will be found in an OPR recommendation are even stronger than usual. That is so for the following reasons:

- First, the OPR’s recommendations are not merely administrative practice: they are generated in the exercise of a statutory discretion and in the statutory scheme governing the Ministerial Direction process.
- Second, the fact of the OPR’s s.31AN(4) Recommendation is proximately a jurisdictional prerequisite to the exercise of the Minister’s power to issue a direction. Indeed, non-proximately, compliance with the statutory scheme generally is a jurisdictional prerequisite.
- Third, the exercise of the Minister’s power to issue a direction is predicated not merely on the fact of the OPR’s s.31AN(4) recommendation but on the Minister’s agreement with it. That is not merely a predicate: in the case of such agreement, the Minister must issue a direction.

68. The foregoing factors do not rule out the possibility that the Minister might lawfully agree with the OPR’s s.31AN(4) recommendation as to the substance of the direction to be made and issue it accordingly but for stated reasons which, more or less, differ from those given in the OPR’s s.31AN(4) recommendation. However, they do make it highly predictable that, in issuing a direction, the Minister will, in greater or lesser degree, have adopted the reasons given in the OPR’s recommendations. In those circumstances, it is entirely reasonable and not at all excessive to expect that a person, such as Mr Fox, seeking the reasons for the Impugned Direction, will seek out the OPR’s recommendations.

69. To gild a little the lily of the conclusion I have just drawn, I add that the terms of the Impugned Direction explicitly record that it is made “consequent to” the OPR’s S.31AN(4) Recommendation. Where a direction is explicitly a consequence of a recommendation and a recommendation is likely to contain reasons for making the recommendation, it is, again, entirely reasonable and not at all excessive to expect that a person, such as Mr Fox, seeking the reasons for the Impugned Direction, will seek out the OPR’s S.31AN(4) recommendation.

70. Counsel for Mr Fox, sensibly on the facts of this case, did not strongly press the point that, whereas the Impugned Direction was made on 21 February 2023, the s.31AN(4) Recommendation was not published on the OPR’s website until 7 March 2023 – two weeks later. Counsel for the OPR sensibly agreed that the 2-week interim was sub-optimal. It should be clearly stated, in a context in which time limits for seeking leave to seek judicial review are conspicuously short, that all documents asserted to contain reasons for an administrative decision should be available to interested parties more or less contemporaneously with the publication of the decision itself. That is because a prime function of reasons is to enable an interested party to consider whether there are grounds on which the decision might be quashed in judicial review. That necessity of more or less contemporaneous availability arises as a matter of the law of judicial review and independently of any statutory requirements as to either the publication of documents or the timing of such publication. In the present case, the applicable time limit for seeking leave to seek judicial review was 3 months from the Impugned Direction. Not having deposed to any search for the s.31AN(4) Recommendation Mr Fox was unable to depose to any prejudice to him by reason of its delayed publication. In any event, and absent evidence to the contrary, I consider that prejudice by the delay of 2 weeks in the context of the 3-month time limit is improbable. Whether such a delay would prompt a different inference on different evidence or in the context of a shorter time limit for seeking leave to seek judicial review I need not, in this case, decide.

71. Counsel for Mr Fox argues also that the stipulation in s.31AN(4A) PDA 2000 of the Minister’s agreement with the OPR’s s.31AN(4) recommendation as a jurisdictional prerequisite to a direction

- implies that a s.31AN(4) recommendation will not contain, or be likely to contain,
- or put slightly differently, does not imply that a s.31AN(4) recommendation will contain, or be likely to contain,

reasons, for such a direction, such that someone interested in ascertaining those reasons need not consult the s.31AN(4) recommendation. The Respondents argue that the fact that the Minister’s agreement with the OPR’s s.31AN(4) recommendation is a jurisdictional prerequisite to a direction amplifies rather than rules out the possibility that a s.31AN(4) recommendation will contain, or be likely to contain, reasons for a direction. I respectfully agree with the Respondents. That a jurisdictional prerequisite consists in agreement with a recommendation self-evidently renders it at least predictable that the recommendation will contain reasons for the agreement and hence contain reasons for the decision which proceeds from such agreement.

S.31AM(8) NOTICE - 7 OCTOBER 2022

72. The context in which to consider the question of finding reasons in the OPR’s s.31AM(8) Recommendation is different. S.31AN(4A) does not apply and the Impugned Direction explicitly records that it is made “consequent to” the OPR’s s.31AN(4) notice – not to the s.31AM(8) Recommendation. However, in my view the answer to the question is the same – reasons for the Impugned Direction may be found in the s.31AM(8) Recommendation for the following reasons:

- First, the explicit reasons given in the Impugned Direction assert that the Development Plan has not been made in a manner consistent with, and has failed to implement, the OPR’s s.31AM recommendations. Remembering that, as explained above, it is inherent in the concept of a

recommendation that it will give advice – i.e. state reasons - for the substantive recommendation made, it follows that the assertion in the Impugned Direction suffices, of itself and without more, to require a person seeking reasons for the Impugned Direction to consult the s.31AM(8) Recommendation. The adoption, as a reason for a direction, of non-compliance with a s.31AM(8) recommendation implies the acceptance in substance of that recommendation and readily allows the inference of adoption in the direction of the reasons given in that recommendation for the substance of the direction recommended.

- Second, there is the factor that, while the s.31AM(8) Recommendation is not proximately a jurisdictional prerequisite to the exercise of the Minister’s power to issue a direction, it is nonetheless such a jurisdictional prerequisite as it is an essential part of the iterative statutory scheme which leads to a direction. True, the reasoning and the substance of the contemplated direction may alter later in the iterative statutory process (as, for example, submissions are considered), such that the content of the s.31AM(8) Recommendation may require careful scrutiny to discern whether in fact it contains reasons for the direction ultimately made. But the general proposition that a s.31AM(8) recommendation may well contain such reasons, and should be consulted accordingly, is clearly correct.
- Third, and particular to this case, there is the further consideration that the OPR’s s.31AN(4) Recommendation, to which, as I have held, regard must be had in ascertaining the reasons for the Impugned Direction, itself explicitly reiterates and adopts, by both reference and recitation, the OPR’s submissions to the Minister in its s.31AM(8) Recommendation.

S.31AM SUBMISSIONS & RECOMMENDATIONS – 25 MAY 2022

73. As to the OPR’s submissions and recommendations of 25 May 2022, regarding the proposed amendments to the Draft Development Plan, including MA Recommendation 3, advising against Amendment V1-11(a), it will be remembered that

- they were made pursuant the statutory scheme - to s.31AM PDA 2000.
- for reasons given, they advised against incorporating Mr Fox’s Lands within the Kilpedder - Willowgrove development boundary.
- they represent the first articulation of what remained, as to Mr Fox’s Lands, the OPR’s consistent position throughout its involvement in the statutory process which resulted in the Impugned Direction.
- They were not merely made to the Council - by s.31AM(3)(b) they were copied to the Minister.

74. As to the copying to the Minister of the OPR’s submissions and recommendations of 25 May 2022, the Oireachtas, as legislature, is presumed not to act in vain or pointlessly or without purpose. What is termed the “*presumption against surplusage*” is “*a basic tenet of statutory interpretation that the Oireachtas is presumed not to “waste its words or say anything in vain”*”: **Bird**,⁷⁸ citing **Whillock**.⁷⁹ So, it is presumed that the statutory requirement that the Minister be copied the OPR’s submissions and recommendations has a purpose. It is hardly to ignore them. So the Minister, it is readily to be inferred, will have regard to such

⁷⁸ Bird v Iconic Newspapers [2025] IESC 30.

⁷⁹ Whillock v Cork County Council [1993] 1 IR 231, per Egan J at 239.

submissions and recommendations in fulfilling his role in the statutory scheme which results in ministerial directions. It is a short step from there to the appreciation that the OPR's submissions and recommendations of 25 May 2022 as to the proposed amendments to the Draft Development Plan, may well, on Connelly principles, illuminate the reasons for the Impugned Direction and are to be consulted accordingly in ascertaining those reasons.

75. Further, much of the rationale set out above as to finding reasons in the OPR's s.31AM(8) notice applies also to the OPR's submissions and recommendations of 25 May 2022. Not least,

- the Impugned Direction's assertion of failure to implement OPR recommendations identifies them as made under s.31AM.
- The s.31AM(8) Notice cited the OPR's Submission of 25 May 2022, including MA Recommendation 3.
- The OPR's submissions and recommendations of 25 May 2022, including MA Recommendation 3, had been in the public domain since 25 May 2022.⁸⁰

THE "STATED REASONS" REQUIREMENT

76. Finally, I reject Mr Fox's submission that the fact that the Minister, by s.31(1) PDA 2000, may only issue a Direction for "stated reasons", considered with the distinct provision of s.31AN(4A) that the Minister, may, as a matter of jurisdiction, only issue a Direction if (s)he agrees with the OPR's s.31AN(4) recommendation, requires that the Minister must

- independently form an opinion that a direction should issue.
- state reasons other than those to be found in the s.31AN(4) recommendation.

77. The first point is clearly correct. But it does not prevent a decisionmaker from adopting the reasons of others with which reasons it agrees. As was said in **Jones**:⁸¹ *"Agreeing with someone else is not an abdication of a function or a fettering of discretion, ... It is the exercise of a function, not the abdication of the function."*

78. I can see a certain literalist logic in the second point, but little sense. One might even suggest that, noting from a literal perspective the dual requirement of agreement with the OPR S.21AN(4) Recommendation (and inferentially the reasons they contain) and of stating the Minister's reasons, the presumption against surplusage applies, such that the latter requirement is additional to the former. But in statutory interpretation, presumptions are merely that. They are aids to interpretation – tools not to be mechanically applied but to be deployed if useful and as occasion prompts – **Chain Wen Wei**⁸² and **Crilly**.⁸³ I do not consider that such logic or that presumption prevails over the reasoning set out above for seeking reasons for directions in OPR recommendations.

⁸⁰ See table above.

⁸¹ *Jones v. South Dublin County Council* [2024] IEHC 301.

⁸² *Chain Wen Wei v Minister for Justice & Commissioner of An Garda Síochána* [2024] IESC 58, [2024] 12 JIC 1903.

⁸³ *Crilly v Farrington* [2001] 3 IR 251 SC.

79. More useful here are the presumptions that the legislature knows the law – here the public law of reasons - and will not intend to depart from it save clearly. A decisionmaker’s duty to make its own decision for its own reasons is central to administrative law and that it is required as a matter of constitutional fair procedures to state those reasons (the main reasons on the main issues⁸⁴) is all but invariable, whether or not by statutory obligation - **Mallak**.⁸⁵ That it is imposed in the case of Ministerial Directions by statutory obligation to “state reasons” does not differentiate the duty from, for example, the similar statutory duty on An Coimisiún Pleanála to state reasons for its decisions on planning appeals or, for that matter a similar duty arising at general law and absent statutory prescription. No such requirement prevents a decision-maker from adopting as its own reasons formulated by others. The question whether it has adopted such reasons as its own is essentially a matter of inquiry as to fact. Also relevant is the presumption favouring workable legislation – **Moss**.⁸⁶ The proposition that, though agreeing with the OPR’s reasons and considering them comprehensive, the Minister must superimpose some novelties of his/her own is a recipe for pointless and unconvincing invention. Equally pointless is any proposition that the Minister must explicitly recite the OPR’s reasons in his/her direction to the exclusion of the possibility of incorporating them by reference – express or implied. In truth, counsel’s proposition ran contrary to the rule in *Connelly* that reasons may be found anywhere as long as it is clear that they are in fact the reasons of the decision-maker – whether the decision-maker was, in point of time, the first to articulate those reasons is irrelevant.

SOME CONCLUSIONS

80. Accordingly, I conclude that

- It was entirely reasonable in the circumstances of this case to expect Mr Fox, in seeking to ascertain the reasons for the Impugned Direction, to seek out the OPR’s s.31AM and S.31AN(4) Recommendations. There is no evidence that he did so.
- As a matter of probability, had he sought them out he would have found them, without excessive search and in good time to consider them in deciding whether to seek judicial review of the Impugned Direction.
- Leaving aside, pro tem, the adequacy of those reasons as to content, the OPR’s s.31AM and S.31AN(4) Recommendations do contain reasons for the Impugned Direction.

⁸⁴ Of the many cases to this effect see, recently, *Hession v An Coimisiún Pleanála* [2026] IEHC 355. Also *O'Donnell v An Bord Pleanála & Drumakilla* [2023] IEHC 381 §39 and the cases cited therein.

⁸⁵ *Mallak v Minister for Justice* [2012] 3 IR 297.

⁸⁶ *Moss v ACP & Lightsource* [2026] IEHC 62 & cases cited.

ADEQUACY OF REASONS

81. The reasons required are the main reasons on the main issues. **Connelly** requires that they enlighten any interested party in understanding, at least in general terms, why the decision went the way it did – that they demonstrate, to the degree necessary, the reasoning behind the conclusion. That degree is determined by the purpose of reasons – notably that of enabling an interested party to decide whether, on what evidence and with broadly what prospect of success, it might challenge the decision by appeal or in judicial review as unlawful. That degree can be described as the essential rationale on foot of which the decision is taken. Also, reasons promote public confidence in decisions. As an aspect of the requirement that justice must not only be done, but be seen to be done, reasons must disclose that the decision-maker has directed its mind adequately to the issue before it. **McCarthy Meats** requires that reasons be clear, cogent and comprehensive.

82. Reading, as I have held I should, the Impugned Direction with the OPR’s s.31AM and S.31AN(4) Recommendations, to ascertain the reason for the Impugned Direction, I first reject the proposition that the that the Direction itself is inadequate in aggregating its reasons and in identifying the general reasons set out in the Direction which are particular to Mr Fox’s lands. I have in the past considered Directions inadequate in their attribution of generally expressed reasons to particular lands in Directions affecting many differently situated parcels of lands for different reasons. It is essential that each landowner must be able to reliably discern what specifically are the reasons given for a direction which relate to specifically his/her lands.

83. First, in this case I consider that §1 of the Statement of Reasons in the Impugned Direction can readily be read as specifically relating to Mr Fox’s lands to the effect that

“The Development Plan as made includes material amendments to the draft Plan, that individually and cumulatively are not consistent with the Core Strategy, national and regional planning policy, and the proper planning and sustainable development of the area, including:

- b) *“Settlement boundary extensions and land zoned for residential development (including for a nursing home/ residential care facility) located in peripheral locations removed from the existing settlement, and in the absence of infrastructure required for such development, inconsistent with the requirements for compact growth in NPO⁸⁷ 3c and RPO⁸⁸ 3.2, the tiered approach to zoning in NPO 72, the proportionate growth of rural towns in NPO 18(a), and the sequential approach to development having regard to the policy and objective of the Development Plans Guidelines for Planning Authorities (2022) regarding the sequential approach (section 6.2.3).*
- d) *Settlement boundary extensions and land zoned for development in locations that would facilitate a pattern of car-dependent development inconsistent with objectives to promote sustainable settlement and transportation strategies.”*

⁸⁷ National Policy Objective of the National Planning Framework.

⁸⁸ Regional Policy Objective of the RSES.

84. Second, it is immediately clear, once the OPR's s.31AM and S.31AN(4) Recommendations are consulted, that Mr Fox's assertion of absence of reasons specific to his lands cannot succeed. Such reasons are explicitly given in passages explicitly headed by reference to Amendment V1-11(a). I have recited them above and will not repeat them here.

85. Third, the relevant statutory provisions are adequately identified and, as to planning merit, reasons are set out. I have set them out above. I repeat here merely what seem to me the pithiest examples:

- *"Kilpeddar – Willowgrove is a small settlement with limited services. There is no school and very limited local amenities serving existing residents, which has been highlighted in many submissions to the Draft Plan. The boundary identified in the Draft Plan already includes adequate land to accommodate the appropriate level of future development that village can sustain."*
- *"The scale of the boundary extension would, however, significantly increase the development potential of the lands in a piecemeal manner, and in a location that will contribute to further car-dependent urban sprawl in this area contrary to compact growth and objectives to promote sustainable settlement and transportation strategies under section 10(2)(n) of the Act."*
- *".... the site is poorly serviced by public transport, with limited services and limited prospects for public transport enhancements during the life of the Development Plan."*
- *"... no evidence-based justification has been provided in this instance to address the CE's conclusion ... that the settlement boundary in Kilpeddar–Willowgrove includes adequate land to facilitate future development and the settlement capacity constraints set out in the CE's reason for recommending against the amendment. the settlement boundary in the draft Plan does facilitate housing and there is no evidence that this land in particular is required to meet housing need in accordance with the Core Strategy."*
- *"..... the boundary extensions and zoning objectives in peripheral locations would both individually and cumulatively constitute an approach to the proper planning and sustainable development of lower tier settlements which is inconsistent with national and regional policy for compact growth."*

86. Importantly and in law, whether Mr Fox agrees with or accepts these reasons as to their planning merit is beside the point of the law of reasons. That merit would be a matter for challenge in the law of irrationality – which challenge is not made. As to the law of reasons as laid down in cases such as **Connelly** and **McCarthy Meats**, I have no doubt that the reasons stated entirely adequately enable Mr Fox to understand why the decision to make the Impugned Direction went, as to his lands, the way it did.

87. In the circumstances, I do not propose to decide the pleading issue whether Mr Fox was entitled to impugn the substantive adequacy of the reasons given. He did not plead that issue – his logic being that he could not plead the substantive inadequacy of reasons of which he was unaware. The pleading issue was whether, on sight of the statements of opposition identifying the documents on which the Minister relied as disclosing his reasons and asserting, contrary to Mr Fox's plea, that they were not in the public domain, Mr

Fox was obliged to seek to amend his proceedings to plead substantive inadequacy of reasons in order to argue such inadequacy. As I say, I do not decide that question as, assuming its resolution in Mr Fox's favour, I consider that the adequacy of the reasons was simply obvious for reasons I have given above.

REMAINS OF GROUND 2

88. I earlier disposed of the core of Ground 2. However, the particulars of Ground 2 pleaded that the Minister failed to have regard to the "Farry Submissions".⁸⁹ Mr Fox adduced no evidence to support the plea and displace the **G.K.**⁹⁰ presumption of such regard and the clear evidence of such regard in the OPR's s.31AN(4) Notice. That notice addressed in some detail the listed "*Additional issues raised in submissions*"⁹¹ which are readily identifiable as deriving from the Farry Submissions. Short of failure of regard, the plea that inadequate weight was accorded the Farry Submissions is unstateable – weight is for the Minister, not the court. So too, the assertion that the Minister gave excessive weight to objectives in the NPF and RSES or misapplied the 'sequential approach' to zoning set out in the 2022 "Development Plans - Guidelines for Planning Authorities". **FoIE**⁹² and **Mount Salus**⁹³ establish that the Minister's decision was inherently evaluative and attracts a deferential standard of judicial review requiring proof of clear legal error. The Court may not intervene merely because Mr Fox prefers the Elected Members' opinion of consistency with national and/or regional policy to that of the Minister. Mr Fox's claims that insufficient consideration was given to the specific characteristics of his lands and that excessive weight was placed on national and regional planning policy amount to an impermissible, merits-based disagreement with evaluative judgements, rather than the identification of any legal error. The OPR and the Minister considered the characteristics of the Mr Fox's Lands, including their peripheral location, incompatibility with compact growth principles, inconsistency with the Core Strategy, and conflict with national and regional planning policies promoting sustainable settlement patterns and transport integration. The Impugned Direction will not be quashed by reference to these pleas.

CONCLUSION

89. For the reasons I have given, I dismiss the proceedings. I will list them for final orders on 6 July 2026.



David Holland
30/06/26

⁸⁹ See below.

⁹⁰ *G.K. v Minister for Justice* [2002] 2 IR 418.

⁹¹ Listed above.

⁹² [2025] IECA 128.

⁹³ [2026] IECA 28.