

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

**Record No. 2024/1052 JR
[2026] IEHC 457**

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

BETWEEN:

LISSAN COAL COMPANY (IRELAND) LIMITED

and

LCC PROPERTIES AND INVESTMENTS (IRELAND) LIMITED

Applicants

and

**AN COIMISIÚN PLEANÁLA,
THE NATIONAL TRANSPORT AUTHORITY,
IRELAND AND THE ATTORNEY GENERAL**

Respondents

FINAL ORDERS RULING OF MR JUSTICE DAVID HOLLAND, DELIVERED 14 JULY 2026

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INTRODUCTION & THE JUDGMENT

1. I delivered judgment in this matter on 30 April 2026 (“the Judgment”). This final orders ruling should be read with the Judgment and I will use defined terms as used therein. The essential matrix of this case lies in my holding, which was not disputed, that by the NTA’s intended creation of certain “Bus Gates” as part of the Blanchardstown to City Centre Core Bus Corridor Scheme (“the Scheme”), Lissan’s Filling Station business on Old Cabra Road, Dublin 7 would be deprived of almost all of its passing trade and thereby would be rendered commercially unviable.

2. As it is the live issue remaining for decision, it may assist to say at the outset that, for reasons I state below, I will not certify an appeal in this matter.

3. Lissan sought certiorari quashing, in whole or in part and on six Core Grounds,¹ the Impugned Decisions of the Commission, made on 21 June 2024, to,

- Approve the Scheme, pursuant to s.51 of the Roads Act 1993,² and ss.215 and 217C(2) PDA 2000,³ (“the S.51 Approval”)
- and
- Confirm, pursuant to s.76 of the Housing Act 1966, and s.214 and 217C(1) PDA 2000, the Bus Connects Blanchardstown to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2022 (“the CPO Confirmation” and “the CPO”).

The Scheme and the CPO had been submitted to the Commission, for approval and confirmation respectively, by the NTA.

4. The State was joined in the proceedings as Lissan asserted that the Scheme and/or the CPO represented unjust attack on their constitutional rights – primarily property rights - and that certain legislative provisions were unconstitutional accordingly or contrary to Article 1 of the First Protocol of the European Convention on Human Rights.⁴ Also, Lissan claimed a declaration that the defence of statutory authority, whether in the law of public nuisance or otherwise, is unconstitutional in so far as it precludes or does not provide for compensation for the reduction in the value of Lissan’s land or substantial loss to or likely closure of Lissan’s Filling Station business. While the case made was complex and is difficult adequately to express pithily, an essential element of Lissan’s complaint was that the CPO excluded them from its compass on the erroneous basis that no land would be acquired from Lissan and that thereby Lissan would be deprived of compensation for its loss. Lissan also opposed the Scheme by reason of its inclusion of the Bus Gates. I confess that, despite my inquiry, I remain somewhat unclear whether Lissan’s prime objective was to frustrate the Scheme so that its Filling Station business could continue to trade or was to recover

¹ Identified at §80 of the Judgment.

² All references to statutes in this ruling are to statutes as amended.

³ Planning & Development Act 2000.

⁴ The impugned statutory provisions were, Part IV of the Roads Act 1993, S.44 of the Dublin Transport Authority Act 2008, S.184 of the Local Government Act 2001, Ss.215 and/or 217C PDA 2000, S.10 of the Local Government (No. 2) Act 1960 and Ss.63 and/or 68 of the Lands Clauses Consolidation Act 1845.

compensation for the Scheme's rendering that business unviable – though, of course, it was entitled to pursue both aims as alternatives.

5. Lissan also sought a declaration that the NTA may not interfere with and/or restrict any public right of way along Old Cabra Road and/or at such other locations where the S.51 Approval proposes such interference and/or restriction, other than those public rights of way referred to in Part III (Section B) of the Schedule to the CPO.⁵ The restriction imposed by the Bus Gates is not so listed. In truth, the reference to “*such other locations*” reflected not so much an aim of Lissan as the logic of Lissan's real concern – which related specifically to the public right of way along Old Cabra Road.

6. By the Judgment, I decided to quash specifically the S.51 Approval on Ground 6. While regard should be had to the terms of the Judgment, which is complex, my decision is summarised in the following from the Judgment, referring to the prospect of closure of the Filling Station by reason of the effect of the Bus Gates:

“354. Where, here, the EIAR had characterised that closure as “Negative, Very Significant and Long-Term” it was clearly necessary that the Commission consider the possibility that such effect would be significant for EIA purposes and, further, that it would do so on a correct – that is to say, evidentially-based - appreciation of the facts. Unfortunately, whereas the evidence allowed only a conclusion that the Scheme would close the Filling Station, the Inspector informed the Coimisiún that the Filling Station could continue to operate despite the Scheme – a conclusion that was true only in a very narrow, technical, physical and irrelevant sense. Thus, it seems to me, the Commission, in accepting and adopting the Inspector's euphemistic description of the effect on the Filling Station, operated on a material error of fact and its decision in EIA was irrational and unfair to Lissan as not evidence-based.

355. The decision will be quashed on that account.”

7. Against the possibility of error on my part in the foregoing, I also took the view that, viewing the matter as one of planning analysis as opposed to EIA,

“360 ... the S.51 Approval, considered as a development consent to which planning considerations are relevant, succumbs to the same analysis as I have performed with reference to EIA. It falls to be quashed accordingly.”

8. As to Lissan's allegation of unjust attack on its constitutional rights of property and, for reasons set out at greater length in the Judgment, I rejected certain of Lissan's assertions, and Grounds 5 and 8 and the challenge to the Defence of statutory authority, as follows:⁶

⁵ Section B is entitled: “Description of public rights of way to be restricted or otherwise interfered with”. As to the necessity for such entries in a CPO see the Judgment §104 et seq.

⁶ Where I cite excerpts from the Judgment, I have deleted some footnotes unnecessary for present purposes.

“245. ... assuming that Lissan will go uncompensated for its loss of passing trade and the resultant failure of its Filling Station business, I see in the Impugned Decisions no unjust attack on Lissan’s constitutional rights. It follows that the Impugned Decisions will not be quashed for unjust attack on Lissan’s constitutional rights and Lissan may safely be left to such rights to compensation, if any, as it may establish at law.

246. ... I reject Ground 5 as it asserts

- interference with Lissan’s private right, as a frontager, of access and egress between the Site and the public road. The assertion fails on the facts. The Scheme will not interfere with such access and egress between the Site and Old Cabra Road.*
- interference without provision for compensation, with Lissan’s right to enjoy the public right of way as access to the Site and its Filling Station business for themselves or their invitees/customers. There will be no substantial interference with the general right of such access – it will remain, if only via Glenbeigh Road. The Scheme will cause a specific and substantial interference with the benefit the Filling Station business derives by way of custom from through private traffic along Old Cabra Road. However, even assuming that the common law and statute will provide no compensation for that particular interference, that interference is not an unjust attack on Lissan’s constitutional and/or ECHR rights to property.*
- As a matter of constitutional law, ...*
 - that Lissan was not listed in the schedule to the CPO as a person from whom land is to be acquired or whose rights are to be interfered with or restricted is not unlawful, whether or not Lissan is correct in asserting that its absence from such list precludes their claiming compensation under s.63 or s.68 of the 1845 Act⁷ or otherwise.*
 - Lissan can be safely left to whatever rights to compensation for such interference, if any, as the common law (including the law as to public nuisance) and statute may provide. If it has a good claim, well and good. If not, recourse to the Constitution will not avail it.*

247. It follows that it is unnecessary to consider Ground 8 – which can be dismissed. No question arises on the facts of this case of the legislative invalidity of any statute or rule of statutory authority in public nuisance by reason of their failing to provide for compensation, as no attack on constitutional rights is at issue which, if left uncompensated, would be unfair.

248. I should for completeness refer to the acceptance by counsel for Lissan, as to the so-called defence of statutory authority in the law of public nuisance, that he didn’t think he had “much prospect of success to be quite frank in terms of establishing that the defence of statutory authority is unconstitutional but I need to make the point so that I adopt a comprehensive approach.”

⁷ Lands Clauses Consolidation Act 1845.

9. I upheld Lissan’s Ground 7, which alleged the Commission’s failure to give adequate reasons for its refusal of Lissan’s request for an oral hearing. However, as I also took the view that an oral hearing had not in substance been required, and in light of the decision in **Waterville Fisheries**,⁸ I rejected the claim for certiorari on Ground 7. I said I would hear the parties as to whether declaratory relief should be granted on Ground 7.⁹

10. Of current interest, as it is the subject of the application for leave to appeal, I rejected Lissan’s Ground 3 as to the interpretation of s.213(2)(a) PDA 2000.¹⁰ It identifies what is to be considered an “*acquisition of land*” for purposes of compulsory acquisition. It includes in the concept of land “*any easement, way-leave, water-right or other right over or in respect of any land*”. I held that this phrase does not encompass a public right of way. Accordingly, I held that the restriction by the bus gates of the public right of way over Old Cabra Road was not an “*acquisition of land*” requiring identification as such in the CPO.

11. It may assist to here repeat the “*Overall Conclusion & Observations On Remedy*” as set out in the Judgment:

“362. For the reasons I have set out, all grounds of challenge are dismissed save Ground 6 and also Ground 7 as to the possibility of a declaration of the inadequacy of the reasons given for not holding an oral hearing.

363. On Ground 6, I will quash the Impugned Decision for the reasons I have given. However, I would be grateful if the parties would consider with some care the question of my discretion as to remedy. Indeed, the NTA asked for that opportunity – to no objection from Lissan. I express the following views provisionally and subject to submissions by the parties.

- *Certiorari and remittal of the S.51 Approval will be by reason of a very narrow finding relating to a very limited, if vital, element of the Scheme considered as a whole – i.e. the bus gates and their effect on the Filling Station. I am inclined to consider that Crofton¹¹ does not preclude my fashioning a remedy in certiorari and remittal proportionate to the narrow finding made on Ground 6. I am anxious to avoid imposing on the Commission a wide-ranging reopening of the entire Scheme – both as I think it in substance unnecessary and in hope that the Commission could revisit the matter relatively quickly. I canvassed this issue at trial. Provisionally, I am minded to quash and remit the Impugned Decision only as it relates to the effect of the bus gates on the Filling Station, absolving the Commission of considering wider or other issues save, perhaps, as they may arise consequential on its consideration of that effect. By way only of example, wider issues of the benefits of the Scheme and the view (if again taken by the Commission) that the bus gates are vital to the Scheme generally could possibly inform a view of the acceptability of any significant effects of the Scheme. However, I am not to be taken as taking any substantive view on such issues – they are for the Commission.*

⁸ Waterville Fisheries Development Ltd v Aquaculture Licenses Appeals Board, [2014] IEHC 381.

⁹ The Judgment §266, 282 & 362.

¹⁰ §§116-123 and §§290-291.

¹¹ Crofton Buildings & Anor -v- An Bord Pleanála [2024] IESC 12.

- *Also, Ground 6 impugned the S.51 Approval only – not the CPO. I have found that no lands or property rights are to be acquired from Lissan and that the CPO is not defective. But possibly, a question may arise whether the CPO can survive certiorari of the S.51 Approval. Or perhaps that question could be deferred pending any decision of the Commission on any remittal to it of the S.51 Approval.*

If these provisional views are broadly acceptable to the parties, I invite them to seek to agree the form of order to be made.”

ISSUES & ORDERS SAVE AS TO LEAVE TO APPEAL

12. When this matter came before me for mention for final orders, the following issues arose for decision:

- (1) Terms of the final order, including remittal;
- (2) Declaratory relief in respect of the oral hearing ground;
- (3) Consequences of *certiorari* for the CPO, including the possibility of an order pursuant to s.217(6A) PDA 2000¹² extending time for service of Notices to Treat;
- (4) Costs;
- (5) The application for a certificate of leave to appeal;
- (6) Costs of the application for mention for Final Orders.

13. Having heard the parties at the final orders hearing, I decided *ex tempore* all of those issues save that of certification of leave to appeal and the costs of the final orders hearing. I did so for reasons given at the time which, as I indicated at the final orders hearing to no dissent, I need not here elaborate. I did so in terms apparent from the form of order which I append to this ruling. While these matters were not formally resolved by consent, I wish to express my particular gratitude for the constructive engagement of all counsel in the resolution of these matters. I am also grateful for their submissions as to the issue of certification.

¹² (6) where a compulsory purchase order ... is confirmed ... and becomes operative and the local authority decides to acquire land to which the order relates, the local authority shall serve any notice to treat for the purchase within 18 months of the order becoming operative.

6A)(a) Notwithstanding subsection(6), where legal proceedings are in being challenging the validity of either —

(i) the compulsory purchase order ... (ii) permissions, consents or authorisations granted by or under this Act or by or under any other enactment relating to the project in respect of which, or being the purpose for which, the land concerned is to be acquired, and a notice to treat is not served within the period of 18 months (in this subsection referred to as the "first period"), the first period shall be extended for a further period (in this subsection referred to as the "second period") beginning on the day immediately after the day on which the first period expires and expiring on the earlier of the following: (I) 30 days after the day on which the legal proceedings are concluded; or (II) 18 months after the day on which the first period expires.

(b) Where proceedings referred to in paragraph (a) have not been concluded during the second period, ... the High Court ... may, if it considers that, in the particular circumstances there is good and sufficient reason for doing so, extend the second period by such further period from its expiration as it believes necessary in the circumstances provided that, having regard to all of the circumstances, it considers that it would be just and equitable to do so.

14. That form of order reflects also my decision to refuse Lissan's application for a certificate of leave to appeal pursuant to s.50A(7) PDA 2000 and my decision as to the costs of the final orders hearing, for reasons I set out hereunder.
15. As to the costs of the final orders hearing, I consider, given the terms of the Judgment that the final orders hearing was inevitable. I also consider that written submissions thereon were inevitable. The resultant substantive order as to reliefs reflects the working out of the Judgment and the final orders hearing was, as expected, completed within a single day. Appreciable lack of dissent accrued during the hearing on all but the issue of certification of appeal. Lissan failed to have the CPO quashed but, in fairness, did not overly press the issue. Lissan has lost the application to certify for appeal. All in all, I think my discretion as to costs is most fairly exercised by regarding the final orders hearing as of a piece with the proceedings generally and so by making the same order as I have made as to the costs of the rest of the proceedings: namely that the Commission pay 70% of Lissan's costs of the final orders hearing.

LEAVE TO APPEAL

LISSAN'S PROPOSED QUESTIONS FOR APPEAL & AGREEMENT ON CERTAIN MATTERS

16. Lissan proposed three questions¹³ for certification for appeal were as follows:

Question 1:

"Whether, in s.213(2)(a)(ii)&(iii) PDA 2000, the words "any easement, way-leave, water-right or other right over or in respect of any land" include a public right of way, such that restriction of or interference with that public right of way constitutes an "acquisition of land" within the meaning of s.213(2)(a)."

Question 2:

"If the answer to Question 1 is yes, whether such restriction of or interference with a public right of way must be identified in and so authorised by compulsory purchase order, with the associated statutory notification consequences, or whether it may lawfully be imposed as a physical traffic-management measure is authorised merely by approval under s.51 of the Roads Act 1993."

Question 3:

17. As I have said, the Judgment¹⁴ queried whether the CPO can survive certiorari of the s.51 Approval. Question 3 was as follows:

¹³ I have edited them slightly without changing meaning.

¹⁴ §363.

“Whether, where a scheme approval under s.51 of the Roads Act 1993 is quashed and the associated compulsory purchase order was confirmed solely for the purpose of implementing that scheme, the compulsory purchase order may lawfully remain in force, or be extended in time, pending the fresh determination of the remitted s.51 application.”

18. At the final orders hearing the parties helpfully agreed two aspects of the issue of leave to appeal.

- Ground 3 will not be certified.
- Ground 2 will be certified if, and only if, Ground 1 is certified.

Accordingly, I can decide the certification application by deciding whether to certify Ground 1 for appeal.

LEAVE TO APPEAL – STATUTORY TEST & CASELAW

19. By s.50A(7) PDA 2000, the High Court’s determination of certain types of application for judicial review, including most issues in the present case, is final and unappealable save with leave of the court to appeal. Leave to appeal to the Court of Appeal¹⁵ shall be granted only where the High Court certifies (a) that its decision involves a point of law of exceptional public importance, and (b) that an appeal is desirable in the public interest. These two are formal, cumulative, overarching and binding statutory requirements – rules in the strict sense. In reality, a third is clearly discernible on a purposive interpretation of s.50A(7) - the jurisdiction to certify must be exercised exceptionally and sparingly. **Doyle**¹⁶ refers to *“The clear legislative intention that planning cases should generally be confined to the High Court.”* – see also **CHASE**¹⁷ and **MRRA**.¹⁸ And, though it is an empirical rather than a normative observation, most applications for a certificate fail.

20. However the application in practice of those rules has required elaboration and has produced a considerable body of caselaw, such as **Glancré**,¹⁹ **SA**,²⁰ **Stapleton**,²¹ **CHASE**, **MRRA** and **Doyle**. I need not here recite the principles readily ascertainable from the judgments in those and similar cases. Those principles are not strict rules set in stone – they are principles requiring evaluative judgment in their application. The list of principles is not necessarily exhaustive. Some generally weigh more heavily than others. Some weigh more heavily in some cases than in others. Some weigh little or not at all in some cases and more so in others. It must always be borne in mind that they are aids to the application of the two statutory criteria. It was said in **MRRA** that most, if not all, the principles are particular expressions of the three main rules that:

- the appeal, to be certified, must invoke a point of law of exceptional public importance.
- for the appeal to be certified, it must be desirable in the public interest that the appeal be taken.

¹⁵ By s.75 of the Court of Appeal Act 2014, references to the Supreme Court in s.50A(7) PDA 2000 are to be construed as referring to the Court of Appeal.

¹⁶ *Doyle v An Coimisiún Pleanála and On Tower* [2026] IEHC 207, [2026] 3 JIC 2606.

¹⁷ *Cork Harbour Alliance for a Safe Environment v. An Bord Pleanála* [2022] IEHC 231.

¹⁸ *Monkstown Road Residents' Association v. An Bord Pleanála* [2023] IEHC 9.

¹⁹ *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250; *S.A. v The Minister for Justice and Equality*, (No 2) [2016] IEHC 646.

²⁰ *S.A. v The Minister for Justice and Equality*, (No 2) [2016] IEHC 646.

²¹ *Stapleton v. An Bord Pleanála & Ors* [2025] IEHC 178.

- the High Court’s decision in most cases is to be final and not appealable - such that the jurisdiction to certify for an appeal should be exercised sparingly.

Power²² is authority for a holistic analysis focussed on the criteria expressly set by s.50A(7) PDA 2000 – that the point of law be of exceptional public importance and that an appeal be desirable in the public interest.

QUESTION MUST ARISE FROM JUDGMENT & MUST BE DISPOSITIVE

21. To be certified for appeal, a question must arise out of the judgment. Question 1 asserts that I misinterpreted s.213(2)(a)(ii)&(iii) PDA 2000 in concluding that,

- In those provisions, the words “*any easement, way-leave, water-right or other right over or in respect of any land*” do not include a public right of way,
- Accordingly, restriction of or interference with a public right of way does not constitute an “*acquisition of land*” within the meaning of s.213(2)(a).

22. Lissan clarified in argument that, in posing Question 1 for certification, it intended to limit the scope of its appeal to seeking to upset the Judgment on Ground 3 only – to seeking a finding that I was wrong to conclude, by reason of my alleged misinterpretation of s.213, that it was unnecessary to list, in the schedule to the CPO, the effect of the Bus Gates on the public right of way between them along Old Cabra Road. Lissan disavowed any intent to rely on Question 1 to argue that the Judgment was wrong also in holding, on Ground 5, that it was unnecessary to list in the CPO Lissan as a landowner from whom land was to be acquired by reason of the effect of the Bus Gates on the public right of way. However, Lissan’s concession that Ground 5 would not be pursued under the rubric of Question 1 is undermined by Lissan’s intimation that, in its appeal on issues of constitutionality of legislation for which, by s.50A(8), it requires no certification, it intends to rely on Ground 5.

23. Lissan submits, correctly, that

- Question 1 “*is a pure question of statutory construction as to whether the phrase “other right over or in respect of any land” in s.213(2)(a) includes a public right of way*”, and that,
- if the restriction of or interference with the public right of way on Old Cabra Road is an “*acquisition of land*” within s.213(2)(a), it follows from s.213(4) that it had to be identified in the CPO if it was to be authorised at all.

In truth, the submission asserts that any opposed restriction of or interference with any public right of way is an “*acquisition of land*” and so requires a CPO. The logic of that submission is that, had there been no CPO for any other reason, a CPO would have been required by reason of the Bus Gates. As Lissan submitted “*If the restriction of or interference with the public right of way on Old Cabra Road is an “acquisition of land” within s.213(2)(a), then the compulsory acquisition of that right is a necessary precursor to the implementation of the Scheme, of which the bus gates form an essential part.*”

²² Power v An Bord Pleanála & Knocknamona Windfarm [2024] IEHC 247 §§11 & 12.

24. The Commission, the NTA and the State object that by its disavowal of appealing Ground 5 Lissan seek to fundamentally, and impermissibly in seeking a certificate, alter, by expanding, the case Lissan made at trial. At trial, Lissan sought to avoid the startling implication of their case (as counsel for the NTA put it – “an unattractive terminus”) that s.213 deemed all interferences in and restrictions of public rights of way to be acquisitions of land and so (at least where opposed) to require a CPO (thereby offending the workability principle of statutory interpretation – see, inter alia, **Waltham Abbey**²³ and **Pat O’Donnell**²⁴). Lissan attempted that avoidance, as the State put it, ‘by subtraction’: by confining their interpretive proposition to one relating to those specially damaged by interferences in and restrictions of public rights of way. The State, in submissions, set out relevant excerpts of the trial transcript. The following suffice for present purposes:

“MR. JUSTICE HOLLAND: *But your case surely isn't that if the council, in an excess of caution, or in an excess of informing the public as to what their intentions were, unnecessarily included interference in rights of way in the schedule to the CPO, it therefore follows that they were obliged to do so in respect of this interference on pain of invalidity of the CPO, I mean that can't be your position, is it?*

MR. GALLIGAN: *No, they were obliged to do it in this instance because of the special loss that my client would suffer as a result in terms of the extinguishment of the business.”*

.....

MR. JUSTICE HOLLAND: *Effectively what you're saying is, every exercise in traffic regulation which might cause a special loss by diminishing public use of a right of way in any way, turning a two-way street into a one-way street, for example, must be effected by a CPO addressed to those who would suffer that special loss.*

MR. GALLIGAN: *Yes. Yes. If there is a public right of way, Judge.”*

25. That Lissan had so confined its case is also recorded at §118 of the Judgment, which I set out below. So Lissan’s case at trial was that restriction of or interference with a public right of way required a CPO if and only if it would cause someone special damage. In effect that case required that the public body making any restriction of or interference with a public right of way must, on pain of failure of its proposal, discern such damage in prospect. Putting Lissan’s case another way: it was that, absent persons specifically affected by the restriction of or interference with a public right of way, a CPO was unnecessary. It is a short step from the identification of someone caused special damage by a CPO to the requirement that such person be listed in the CPO as a person from whom land is to be acquired. In that sense, Lissan at trial essentially fused Grounds 3 and 5.

26. Though I did not so observe in the Judgment, Lissan’s interpretive approach to s.213 was complex in that it required,

- first, an expansive conception of the phrase “*any easement, way-leave, water-right or other right over or in respect of any land*” to include public rights of way and,
- second, the implication in the section of limiting words restricting that expansive conception as to public rights of way, to landowners specially damaged.

²³ Waltham Abbey Residents & Pembroke Road Association v An Bord Pleanála [2022] IESC 30, [2022] 2 I.L.R.M. 417.

²⁴ Pat O’Donnell & Co v Dublin City Council & Uniphar [2026] IESC 36.

27. What Lissan’s written submissions on certification of appeal describe, not inaccurately, as my ultimate conclusion in the Judgment on what has become Question 1 is as follows:

“121. However, for the reasons I have sought to explain above, and on the arguments made in this case, I reject Lissan’s argument that s.213(2)(a) PDA 2000, by the phrase “other right over or in respect of any land”, encompasses public rights of way or supposed private rights to avail of public rights of way.”

Lissan’s written submissions describe Question 1 as *“a faithful and precise formulation of the question so decided. It is the identical question of statutory construction that the Court itself framed and answered.”* Yet the reference to *“supposed private rights to avail of public rights of way”* in substance refers to Lissan’s argument as to those specially damaged by restrictions for or interferences in public rights of way.

28. As the foregoing shows, the interpretive question now posed by Question 1 is much larger than that made at trial. It strips out the special damage criterion and asks whether all and any restrictions of or interferences with a public right of way, even if imposed merely by signage and/or road markings (as the Bus Gates will be) are, within s.213, an “acquisition of land” and so require a CPO. The Commission, the NTA and the State have a considerable point when they say that Question 1 does not arise from Lissan’s case at trial or from the Judgment, They say that by accurately, but simpliciter, identifying the point of law at issue at trial as the interpretation of s.213 shorn of Lissan’s restriction of it to landowners specially damaged, Question 1 seeks impermissibly on appeal to amend and significantly expand the case made at trial and on which I gave judgment, from a case restricted to those allegedly specially damaged to one requiring that every interference in and restriction of public rights of way be effected by CPO.

29. An important principle identified in the caselaw is that a question should not, save perhaps very exceptionally, be certified for appeal unless the intending appellant’s success on that question on appeal, whether by itself or with other questions on which the appellant also succeeds on appeal, would be dispositive in the sense of substantively changing the result of the proceedings. SA is authority that a point that would make no difference to the result of the case – would leave the result in the High Court substantively intact - is inappropriate for certification of leave to appeal. MRRRA states that *“certification should be refused if points of law otherwise certifiable would leave unimpugned one ground upon which certiorari was granted, such that the result of the case will remain unchanged.”* Where it weighs against certification, this principle does so strongly – perhaps, all but exceptionally, dispositively. Indeed, it was perhaps the principle on which the Commission, the NTA and the State relied most strongly, though far from exclusively, in resisting certification.

30. The Commission, the NTA and the State, assert that Question 1 could not be dispositive in the sense required in that, on the issues on which my alleged misinterpretation of s.213 was dispositive in the Judgment, I also reached the same result by other means not impugned by Question 1. Preparing the ground for that argument, they observed that by **s.50A(11)** PDA 2000 the certified question limits the jurisdiction of

the Court of Appeal to the consideration of the point of law which must, the caselaw decides, be precisely identified in the question. By s.50A(11), the Court of Appeal has “*jurisdiction to determine only the point of law certified by the Court under subsection (7) (and to make only such order in the proceedings as follows from such determination)*”. This jurisdictional limit, confining “*the possibility of an appeal to a point of law*” - and to the point of law certified - has been emphasised in **Heavey** and **Cooper**.²⁵ In Heavey, the court stated that s.50A(11) “*precludes this Court from doing anything other than deciding the point of law certified by the High Court.*” Significantly, a question posited for certification for appeal must not merely identify the point of law in question, it must do so precisely – **SA, MRRA, Freeney** and **Stanley**.²⁶

31. As to Ground 3, the Judgment concludes as follows:

“290. But, in the end, Ground 3 essentially turns on the question whether Lissan is correct in asserting that s.213(2)(a) PDA 2000 encompasses, in the phrase “acquisition of land”, the restriction of or interference with a public right of way which must be listed in the CPO. I have earlier in this judgment explained why, in my view, it does not. In short, the bus gates’ interference with – indeed partial obstruction of – the public right of way along the old Cabra road is not an acquisition of land and does not need to be listed in the CPO. Accordingly, the absence of such a listing in the CPO is no impediment to the provision in the s.51 Approval for the bus gates or to their being effected on foot of such approval. Their authorisation consists in the S.51 Approval. Ground 3 therefore fails.

291. If needs be I would refuse relief on Ground 3 on discretionary grounds. Though clearly highly exercised by the issue of the effect of the bus gates as an obstruction or restriction of, or an interference with, the public right of way, as reflected in their submissions in the S.51 Approval process, Lissan never asked the Commission to modify, pursuant to s.217C PDA 2000 and/or Art 5(1)(a) of the 3rd Schedule to the Housing Act 1966, the CPO schedules to record what it (as I have held, incorrectly) now asserts is the acquisition of Lissan’s land, within the meaning of s.213(2)(a) PDA 2000, necessary to the bus gates’ obstructions of the public right of way. Indeed, it is very doubtful the Commission could have done so save with the consent of Lissan as the conventional wisdom at least in CPO law has been, for fairly obvious reasons, that while the Commission could extract and exclude scheduled lands from a CPO, lands cannot ordinarily be added. Lissan cannot now have the CPO quashed on the basis that the Commission did not do what it likely could not have done save on Lissan’s request - a request Lissan never made.”

32. Clearly, Question 1 impugns the finding at §290 of the Judgment. I reject Lissan’s submission that §291 is merely obiter. The phrase “if needs be” might be capable of improvement, but it seems to me clearly enough to contemplate the need for a decision which would arise were I wrong in my finding at §290. That is a common judicial technique in which, of caution, an alternative basis of decision is recorded in a judgment. Whereas §290 and Question 1 relate only to a point of law consisting in alleged misinterpretation of a statutory provision, impugning §291 would require mobilisation of a very different point of law – that I had erred in the exercise of my discretion to refuse relief in judicial review. Counsel for Lissan, understandably

²⁵ Heavey v. An Coimisiún Pleanála [2026] IECA 17 §45; Cooper v. An Bord Pleanála [2022] IECA 278 §23.

²⁶ Freeney v. An Bord Pleanála [No. 2] [2025] IEHC 36 §36; Stanley v. An Bord Pleanála (No. 2) [2022] IEHC 671 §27 citing Clifford & Sweetman v. An Bord Pleanála [2021] IEHC 645.

enough, sought to persuade me in oral argument that I had so erred. But he failed to persuade me, even on the basis that the respective issues are, as he put it, “sufficiently proximate”, that on foot of Question 1 such an argument could be mobilised in the Court of Appeal having regard to the jurisdictional limits on it set by s.50A(11) PDA 2000. As I have noted, the question posed for certification must precisely identify the “point of law” involved in the question and it is that precise point of law that must be of exceptional public importance. The point of law identified in Question 1 is of statutory interpretation. Assuming that point, for sake of argument, to be of exceptional public importance, but remembering that a question must identify its point of law precisely, I cannot see how Question 1 could be considered to encompass also the very different point of law whether I lawfully exercised my discretion to refuse relief in judicial review. For that matter, neither can I see a basis on which the exceptional public importance of the statutory misinterpretation point raised in Question 1 could be imputed to the alleged error in the exercise of discretion. Lissan made no argument that, considered discretely, the alleged error of law in the exercise of discretion was of exceptional public importance.

33. On the basis of Lissan’s disavowal of pursuit of any but Ground 3 on appeal, my view as just expressed suffices to refuse certification of Question 1.

34. However, it is prudent to note that exactly the same reasoning applies to Ground 5. I refused relief inter alia on the basis of my interpretation of s.213 - that *“Insofar as concerns [the loss of] passing trade and obstruction by the bus gates of the public right of way, as I have held, that is not an acquisition of land, from Lissan or anyone else and need not be listed in the CPO.”* For argument’s sake I assume that basis of refusal to be impugned by Question 1 (leaving aside Lissan’s disavowal of intent to appeal my decision as to Ground 5). However, I also stated the following:

“295. A further consideration, raised by the Commission, arises. On any objective view and at all material times, Lissan well knew or ought to have known of the likely effect of the Scheme on the viability of the Filling Station. They made submissions complaining of it in the s.51 process. They complain now that they were shut out of the CPO process as to making such submissions. Yet they never applied to the Commission to make submissions in the CPO process – indeed for the very reason, according to counsel for Lissan, that Lissan was not affected by the CPO. Still less did Lissan make to the Board the argument on which their case hinged at trial – that, with reference to S.213(2)(a) PDA 2000, an “acquisition” of the public right of way along Old Cabra Road had been incorrectly omitted from the CPO Schedule. I find it difficult to see that Lissan can complain of being denied that which they did not seek. Accordingly, if needs be, I would refuse relief on Ground 4 on discretionary grounds.”

35. So, the same reasoning as applies to Ground 3 applies to Ground 5, rendering Question 1 non-dispositive.

36. Accordingly, I refuse certification of Question 1 as non-dispositive in the sense in which that concept applies to certification of appeal pursuant to s.50A(7) PDA 2000. That finding suffices for my decision. I also

do so as the case Lissan now seeks to make by Question 1 is significantly larger than that to which it confined itself as trial.

37. While the foregoing suffices for my decision, I will refer to some other considerations which weigh appreciably in favour of such refusal in this case and to one which does not.

PUBLIC INTEREST – IN APPEAL - IN SCHEME

38. The relevance of the nature of the project permitted by an Impugned Decision to whether an appeal should be certified as in the public interest is apparent in **Doyle**: Humphreys J considered that *“the public interest in this infrastructure is of relevance”* and that *“An appeal is not in the public interest having regard to the importance of telecoms infrastructure”*. In **Massey**²⁷ it was said that *“The nature of the project and the risks of further delay are factors going to the requirement that an appeal must be in the public interest ...”*. In **Moss**²⁸ it was held that *“An appeal is clearly not in the public interest particularly having regard to the public interest in infrastructure and renewable energy ...”* and *“The nature of the project, in this case a solar farm development, and the risks of further delay are factors going to the public interest ...”*. The same essential point was made in **Nagle View**²⁹ as to renewable energy projects – albeit in the context of EU legislation attributing overriding public interest to such projects. In **Halpin**³⁰ Simons J said that *“Leave to appeal a decision which upholds a planning permission may be refused where the court considers that it would be contrary to the public interest to allow an appeal which would further delay an important development project.”*

39. The Judgment acknowledged the considerable public importance of, and public interest in, the Scheme. Inter alia, it noted:

“4. The primary objective of the Scheme is to facilitate modal shift from car dependency by the provision of enhanced walking, cycle, and bus infrastructure, thereby contributing to an efficient, integrated transport system and a low-carbon and climate-resilient city. It is intended to significantly enhance travel by public transport by providing bus priority and improved pedestrian and cycling infrastructure. Particularly, the Scheme is to “Enhance the capacity and potential of the public transport system by improving bus speeds, reliability and punctuality through the provision of bus lanes and other measures to provide priority to bus movement over general traffic movements”. The EIAR states that the Scheme

“will improve both the overall journey times for buses along the route and their journey time reliability, by providing increased bus priority infrastructure. The result will be increased

²⁷ Massey v An Bord Pleanála (No.4) [2025] IEHC 309.

²⁸ Moss v. An Coimisiún Pleanála & Lightsource [2026] IEHC 175.

²⁹ Nagle View Turbine Aware Group v. An Bord Pleanála (No. 2) [2025] IEHC 3.

³⁰ Halpin v An Bord Pleanála & Greenfield [2020] IEHC 218.

journey reliability, by largely removing interaction between bus traffic and general traffic, thereby delivering significant benefits to the travelling public and to the environment.”

“63 in a modern metropolis effective public transport is, for its own sake and for practical reasons, a central element of the common good: it has been considered so since at least Victorian times and the Railway Acts. More broadly, public transport is for the common good in a climate crisis to which the greenhouse gas emissions of private transport make a very significant contribution and from which form of transport modal shift is a national aim. Also public transport may contribute to social justice in favour of the economically less advantaged. In my view, it can only be said that the common good weighs heavily in this case.”

“76. the Commission cited:

- *the strategic nature of the Scheme in the context of the need to deliver an efficient, low-carbon and climate-resilient public transport service, in support of the achievement of Ireland's emission reduction targets.*
- *strong policy support for delivery of infrastructure for public and active travel modes of transport.”*

“232. I hold that the reason for the impairment of Lissan's passing trade is of high public importance and weighs heavily in the calculus. That is so as, first, the bus gates and their resultant effect on through traffic are considered by the Commission, as competent authority, to be essential to the Scheme and second as the public interest in the Scheme is itself of high public importance – its objectives are described above as including the provision of enhanced walking, cycle, and bus infrastructure, thereby contributing to an efficient, integrated transport system and a low-carbon and climate-resilient Dublin city. It can hardly be doubted that the provision for efficient public transport in a notoriously traffic-congested city is of high public importance. ...”

40. Two years have passed since the Impugned Decisions were made. In a statutory architecture in which appeal is to be exceptional and as to a public transport infrastructure project that is not merely in the public interest but is better effected sooner than later, the delay in awaiting determination of an appeal, while it might not be dispositive of the certification question by itself, weighs appreciably against certification of appeal in this case.

POINT NOVEL BUT LAW NOT UNCERTAIN

41. All agree that the point of statutory interpretation which I decided and which is involved in Question 1 is novel. Novelty is really an aspect of the issue of uncertainty in the law. Of the principles applicable in certification of appeals, the requirement of uncertainty in the law is amongst the weightiest. If the law is certain, where is the public interest in an appeal? Absence of uncertainty in the law weighs heavily against certification. However, the law is clear that novelty of the posited point of law, while relevant, is of itself generally insufficient to permit its certification. And merely proposing for appeal a point of law which the

Court has rejected does not mean that the law is uncertain. On these issues see MRRA, Moss, **Callaghan**³¹ and **Maguire**.³² Admittedly, those principles can be difficult to counterpoise with the principle that I should assume that my decision may have been wrong. Admittedly also, that difficulty represents a particular disadvantage of the system (which has countervailing advantages) in which the judge who delivered judgment also decides certification (which decision is final and unappealable) and so may be somewhat invidiously called upon decide whether his/her judgment has been of such quality as to have rendered a novel point certain. There is some degree of corrective of that disadvantage implicit in the observation in **Halpin** and **Grace**³³ and in MRRA that, in deciding whether to certify, the judge should have regard both to the fact that a leapfrog appeal to the Supreme Court under Article 34.5.4° of the Constitution may be open, and to the principle that an appeal to the Court of Appeal is the more normal route for appeals from the High Court.

42. In some cases, an appellate court decision on a novel point can be desirable as weightier authority than a High Court decision. However, the following appears in **Stapleton**:

“22. While the right of appeal is of course a vital one, the proposition that decisions of the High Court in certain planning matters are “final” save where appeal is certified is not limited to its decision of issues particular to the case or to the parties. High Court decisions are final also as to issues of general application – which is clear from their effect as authoritative precedent. The mere fact that there is no appellate decision on a particular point does not per se mean that there is uncertainty in the law.³⁴ Nor does a prospect that the appellate court might decide an issue differently per se avail: that the High Court decision may be wrong is a premise of the appeal certification process. Yet the statutory rarity of appeals implies that in most cases,

- the prospect that the appellate court may decide the issue differently will not be realised, and*
- the law, as declared by the High Court, will remain other than that which the appellate court might have declared.*

That is part of the price of prioritising expedition and finality of litigation which the legislature has accepted in adopting s.50A(7) – perhaps taking the view that in practice, and one would hope from the point of view of the operation of the courts generally, most appeals fail.”

43. The Commission, the NTA and the State, accepting that Question 1 related to my decision of a novel point of statutory interpretation which, in the Judgment, I recorded as a difficult one, nonetheless cited §118 of the Judgment as demonstrating a clear resolution of that point which left no uncertainty on the point. Under the heading “S.213(2)(a) PDA 2000 – Does it Encompass Restriction of or Interference with a Public Right of Way such that a CPO must List it?”, the relevant passages of the Judgment read as follows:

“101. Even the concept of “acquisition” of a public right of way seems incongruous as no person or body, whether or not they own the land over which it passes, can in any real sense own a public right of way. On the one hand, if such a person or body were to “own” the right to the exclusion of the

³¹ Callaghan v. An Bord Pleanála [2015] IEHC 493, [2015] 7 JIC 2405.

³² Maguire T/A Frank Pratt & Sons (No. 2) [2023] IEHC 209, [2023] 3 JIC 1307.

³³ Halpin v An Bord Pleanála & Greenfield [2020] IEHC 218; Grace v. An Bord Pleanála [2017] IESC 10.

³⁴ See Phoenix Rock Enterprises v An Bord Pleanála & Ors [2023] IESCD 97 §26 and Fursey Maguire v Meath County Council [2023] IESCD 96.

public, it would be deprived of its essential characteristic of public user and in reality, is extinguished. If, on the other hand, the public user continues, in what real sense can the “owner” be said to “own” the public right of way - as distinct from the land over which it passes? As to, specifically, the public right to pass and repass, private ownership thereof seems incompatible with its public character. I refer to “private” ownership but it does not seem to me that the position can be any different as to a public body – which, for this purpose (and indeed, generally) is not the “public” but is a legal person distinct from the public, albeit acting in the public interest for public purposes. To the extent that the concept of “ownership” of a public right of way has a sensible meaning, and to state the obvious, only the public, as a general body, can “own” it.

.....

116. Lissan identify s.213(2)(a) PDA 2000 as requiring that interference with or restriction of public right of way be identified in a CPO. It so argues by asserting that such an interference or restriction is an “acquisition of land” within the meaning of s.213(2)(a). this proposition is central to their case

.....

118. In short, Lissan says that the CPO and/or the Scheme restrict or interfere with their alleged rights to the benefit, in the form of passing trade, of unrestricted public use of the Old Cabra Road such that, in that respect, the Scheme includes an “acquisition of land” from Lissan to which compulsory purchase laws and compensation rights apply. The net question is whether S.213(2)(a) encompasses, in the phrase “acquisition of land”, the restriction of or interference with a public right of way. I have found this a difficult question, on which I have found no authority. I resolve it as follows.

a) The starting point is that the phrase “any easement, way-leave ... or other right over or in respect of any land” in s.213(2)(a)(ii) PDA 2000 as to the exercise of powers to “acquire” and in s.213(2)(a)(iii) as to interferences and restrictions will have the same scope of meaning.

b) Next, it bears observing that, by the same statute, s.222 PDA 2000 amended s.10(4)(d) of the 1960 Act³⁵ to provide that a CPO may authorise the NTA³⁶ by order made after they have acquired the land,³⁷ to extinguish any public right of way over or associated with the land acquired or adjacent land. Clearly, that power of extinction would have been unnecessary had s.213(2)(a)(ii) encompassed a power to “acquire” a public right of way. This suggests that the PDA 2000 did not include in s.213(2)(a)(ii) a power to “acquire” a public right of way.

c) If a public right of way falls outside the concept of “any easement, way-leave ... or other right over or in respect of any land” in s.213(2)(a)(ii), it also falls outside the identical concept in s.213(2)(a)(iii).

d) To this point, the analysis implies that a restriction of or interference with a public right of way is not an “acquisition of land” within the meaning of s.213(2)(a)(iii) PDA 2000.

³⁵ Local Government (No. 2) Act 1960 - As substituted by S.86 of the Housing Act, 1966 as amended by Section 6 and the Second Schedule of the Roads Act, 1993, and Section 76 of the Housing Act 1966 and the Third Schedule thereto.

³⁶ The section refers to “the local authority” but in context that is to be read for present purposes as referring to the NTA.

³⁷ A confirmed CPO only authorises the compulsory acquisition of land. The actual acquisition ensues thereafter.

e) *As to why that makes sense and even accepting that s.213(2)(a) PDA 2000 particularly defines “acquisition of land”, I have explained above why the very concept of “acquisition” of a public right of way is incongruous. And the verb in both of S.213(2)(a) (i) & (ii) is “acquire” - a verb the meaning of which is perfectly suited to describe the conveyance of ownership of a private interest but unsuited to the conveyance of a public interest.*

f) *Taking the analysis further, as it seems to me, one must note that*

- *a frontager’s only private right with respect to a public right of way is a right to access and egress between the way and the frontager’s contiguous lands.*
- *as soon as a frontager exercises that private right by egressing its lands onto the public road, that frontager passes thereafter over the public road only in virtue of its membership of the public availing of a public right of way. Ceteris paribus, such a frontager is no more affected in law by extinguishment of the public right of way than is any other member of the public.*

g) *It follows that Lissan’s assertion of the “acquisition of land” from Lissan within the meaning of s.213(2)(a) PDA 2000 is in virtue of, specifically, Lissan’s membership of the public and invoking its entitlement to avail of a public right.*

h) *Taking the analysis further still, Lissan in truth asserts the “acquisition of land” from Lissan in virtue not even of their own user of the public right of way. They assert it in virtue of the restriction of the exercise of that right by third parties: the passing public generally – i.e. their potential customers.*

i) *In that light, the startling breadth of Lissan’s case becomes apparent. On their case, any substantial restriction of a public right of way is an acquisition of land from every member of the public – or at least from every member of the public affected by the restriction. It is even an acquisition of land from any member of the public who, as a private landowner, appreciably avails of passing trade – that is, the exercise by others of their rights of passage. Logically on this view, it is even an acquisition of land from those whose lands are not used for a business which avails of passing trade but whose lands are increased in value by their potential for availing of passing trade.*

j) *As has been seen, s.10(4) of the 1960 Act provides for extinguishment of public rights of way as a matter distinct from, and otherwise encompassed, in a compulsory purchase of the lands on which it lies. Contrasting extinguishment with restriction and interference, it seems unlikely that the greater loss would not be an acquisition of land within the meaning of s.213(2)(a) PDA 2000 but the lesser would be.*

k) *Unsurprisingly, Lissan seek to evade the alarming conclusion that restriction of a public right of way is an acquisition of land from every member of the public by confining their proposal to those frontagers who suffer special damage by such restriction and invoking the right to damages for such special damage in the law of public nuisance. Noting that evasion, it seems to me, transforms Lissan’s case from one based in “acquisition of land” to one based in loss of a right to damages in tort for public nuisance. But whatever may be the true legal nature of a right to damages in tort for public nuisance, it is not an interest in land. While a right to damages may be a proprietary right, it is a very different sort of property to property in land.*

l) Lissan’s confining their proposal that land is acquired to those frontagers who suffer special damage by restriction of a public right of way, such that the acquisition from them must be listed in the CPO, does not merely attempt to transmute a right to damages into an acquisition of land – a sort of legal philosopher’s stone. Remembering that those from whom an acquisition of land is to be made by CPO must be identified in the CPO and individually served with it, and while some instances may be obvious, Lissan’s proposition would put acquiring authorities in the impossible position when drafting and making the CPO of having to identify all those to be listed in the CPO by reference, prospectively, to whether they would suffer, by the underlying scheme, special damage remediable in public nuisance. And that by reference to a question whether in each case the effect on the landowner of the intended restriction of the public right of way would be so particular as to transform the public right into their individual private right. That would certainly be an all-but-impossible burden in large CPOs such as this - involving perhaps thousands of nearby (and perhaps not so nearby) properties more or less dependent on the public road in question. On pain, as Lissan assert, of failure of the CPO, it would be a highly impractical and perilous requirement. The special damage rule in public nuisance “offers considerable scope for dispute on the facts and the cases record differing judicial views on what amounts to such damage.”³⁸ Such a legislative intent is highly and objectively unlikely. It is in that sense that I suggested at trial that Lissan’s hard case invited me to make bad law.

*m) I note Lissan’s assertion that the NTA admit Lissan’s interpretation of s.213(2)(a) PDA 2000 as encompassing, in the phrase “acquisition of land”, the restriction of or interference with a public right of way. But, assuming such an admission, it could not bind the Commission and, more importantly, could not entrap the court in an incorrect interpretation of a statute – **Dowling**.³⁹*

n) I remain, essentially, of a view expressed at trial to counsel for Lissan. Lissan has no private right to avail of the public right of way. It has the same right as any other member of the public to avail of it. What it may have, depending on circumstance, is a right to damages in public nuisance for peculiar damage inflicted on it by interference with that public right of way. That is not an acquisition of land within s.213 PDA 2000.

119. If I am wrong in the foregoing, I accept the NTA’s and the State’s, perhaps simpler, proposition that listing a restriction of or interference with a public right of way in a CPO is unnecessary to advancing the Scheme where the s.51 Approval provides a statutory authority for the Scheme, such that the scheme is nether wrongful nor tortious - which prevents even a person who has suffered special damage from recovering damages for public nuisance. Specifically, the bus gates are authorised by the s.51 Approval – not by the CPO. This is easy to understand if one considers the possibility of the installation of a bus lane or bus gates other than in the context of a wider project such as the Scheme and in a context in which no compulsory land acquisition is otherwise required. In that light, Lissan’s case amounts to an untenable proposition that every bus gate (or, for that matter, any regulatory alteration or diminution of access to or use of a public road) requires, in effect as a matter of constitutional law, a CPO if it would substantially devalue any property and, by extension

³⁸ Lord Hoffmann, *Wildtree Hotels Ltd. v. Harrow L.B.C.* [2001] 2 A.C. 1.

³⁹ *Dowling v. An Bord Pleanála* [2024] IEHC 249 §43 et seq.

that, on pain of failure of the project, all those who will suffer such special damage (wherever they may be) must be listed in that CPO. I reject that proposition.”

44. As will be seen above, the Judgment rejects Lissan’s case (as relevant to Question 1) in detail and to a conclusion that it is “untenable”. Road projects, large and small and of many kinds, notoriously have varying, and sometimes very damaging, effects on commercial interests (not merely, for that matter, on businesses fronting on the road in question). Indeed, road projects allegedly having such effects are a commonplace. Yet Lissan’s proposed interpretation of s.213 is novel. Where I have found it untenable, it may be reasonable to infer that its novelty derives from conventional legal wisdom that it is untenable. Novelty may have various causes and wisdom is often conventional because it is correct. That a point is novel does not imply that it is worthwhile – depending on context it may, indeed, tend to imply the opposite.

45. With, I hope, proper hesitation as I consider my own Judgment, I conclude that the Commission, the NTA and the State are correct in submitting that, despite the novelty of the point of statutory interpretation articulated in Question 1, the Judgment applies well-understood law as to the nature of public rights of way, frontagers’ rights, compulsory purchase and techniques of statutory interpretation to leave no relevant uncertainty as to the meaning of s.213 such as would merit certification of appeal on Question 1.

TRANSCENDENCE

46. The principle is well-recognised that a point of law, to be certifiable, must transcend well beyond the facts of the particular case. I do not propose to treat of it in detail save for one observation. It seems highly incongruous to imply, as Lissan does, that the very factor which renders its interpretation of s.213 unworkable itself implies its transcendence or systemic character. That factor is that the interpretation proposed in Question 1 would require a CPO in every case of interference with or restriction of a public right of way or, even on Lissan’s argument at trial confined to those specially affected, and as found at §118(l), that it “*would certainly be an all-but impossible burden in large CPOs such as this - involving perhaps thousands of nearby (and perhaps not so nearby) properties more or less dependent on the public road in question. On pain, as Lissan assert, of failure of the CPO, it would be a highly impractical and perilous requirement.*” The logic seems to be that the more unworkable the proposition, by reason of the breadth of its effect, the more certifiable for appeal it is. I respectfully reject that logic.

RE-ARGUING THE CASE

47. The Commission, the NTA and the State resist certification also on the basis that Question 1 seeks merely to reargue a rejected point of law. The cases do hold that intending appellants must not, in certification applications, seek merely to reargue the merits which the Court has already decided against them in its substantive judgment. The important word here is “merely”. It refers to the statutory requirements of exceptionality and public interest.

48. After all, in a certification regime which

- confines the intending appellant to his/her pleaded case argued at trial and to a point of law decided, allegedly incorrectly, in the judgment – requires that the point arise out of the judgment,
- prohibits arguments not made to the High Court and merely academic/theoretical, as opposed to dispositive, arguments, and
- requires him/her to show the posited point of law stateable,

it is to be expected that the intending appellant will reargue the lost point of law and do so in the context of the factual matrix to show the point dispositive. And, as the cases recognise, it may be difficult to avoid rearguing the merits (or at least giving the impression of doing so) in order to persuade the Court that the law in the area is uncertain or evolving and that the posited point of law is of exceptional public importance. I confess that I have not in practice much found the “rearguing the merits” argument, taken discretely, to weigh much against certification. However, as a premise in deciding certification is the judge’s acceptance that he/she may have been wrong, labouring beyond the issue of stateability the assertion that the judge was wrong, save perhaps as to the issue of uncertainty in the law, tends to distract from the real issues.

49. Here, I did not find the argument that Lissan was impermissibly seeking to reargue the merits persuasive.

CONCLUSION ON LEAVE TO APPEAL

50. I respectfully decline to certify Question 1 for appeal. It follows that I decline to certify Question 2 for appeal. It is agreed that Question 3 should not be certified. I so decide as the decision of Question 1 would not be decisive of the proceedings – an answer favouring Lissan would not change their result. Lest I am wrong in that conclusion, I decide also to decline to certify Question 1 on an holistic view of all the considerations canvassed above.



David Holland
14 July 2026

**THE HIGH COURT
PLANNING AND ENVIRONMENT**

Record No. 2024/1052 JR

**IN THE MATTER OF SECTIONS 49 AND 51 OF THE ROADS ACT 1993, AS AMENDED
AND IN THE MATTER OF SECTIONS 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED**

BETWEEN:

LISSAN COAL COMPANY (IRELAND) LIMITED

-and-

LCC PROPERTIES AND INVESTMENTS (IRELAND) LIMITED

Applicants

and

**AN COIMISIÚN PLEANÁLA,
THE NATIONAL TRANSPORT AUTHORITY,
IRELAND AND THE ATTORNEY GENERAL**

Respondents

DRAFT FORM OF ORDER (SUBJECT TO PERFECTION)

WHEREAS the Court, in its Judgment delivered on 30 April 2026, decided to quash the decision of the First Respondent dated 21 June 2024 under reference ABP-313892-22 and made pursuant to Section 51 of the Roads Act, 1993 (as amended), to approve the Blanchardstown to City Centre Core Bus Corridor Scheme

and

WHEREAS the ground for so quashing that decision relates only to the inclusion in that Scheme of two Bus Gates on the Old Cabra Road (the one just south east of the Navan Road/Old Cabra Road/ Ratoath Road/ Cabra Road Junction and the other at the Old Cabra Road Railway Overbridge) and their effects on the Applicants' Filling Station business on Old Cabra Road.

THE COURT DOTH HEREBY

1. Make an order of **certiorari** quashing the decision of the First Respondent dated 21 June 2024 under reference ABP-313892-22 and pursuant to Section 51 of the Roads Act, 1993 (as amended), to approve the Blanchardstown to City Centre Core Bus Corridor Scheme insofar only as it authorises two Bus Gates on the Old Cabra Road (the one just south east of the Navan Road/Old Cabra Road/ Ratoath Road/ Cabra Road Junction and the other at the Old Cabra Road Railway Overbridge) and **remits** to the First Respondent, for determination in accordance with law, the question of approval of the Scheme for reconsideration of the impacts of the said Bus Gates on the said Filling Station business and such further matters as may fairly and lawfully arise consequential upon that reconsideration.

2. Dismiss the Applicants' application for relief in respect of the decision of the First Respondent dated 21 June 2024 under reference ABP-313961-23 to confirm the "Blanchardstown to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2022".
3. Declare that the First Respondent failed to furnish adequate reasons to the Applicants of its decision not to hold an oral hearing.
4. Make an Order pursuant to section 217(6A)(b) of the Planning and Development Act, 2000 (as amended) extending the period identified in section 217(6A) of the said Act in respect of the Bus Connects Blanchardstown to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2022 for a period of 30 days following the later of the date of:
 - (i) The conclusion of these proceedings,
 - (ii) The expiry of 8 weeks following the publication of the notice of the making of any decision of the First Respondent to approve the Blanchardstown to City Centre Core Bus Corridor Scheme (as remitted to it) pursuant to section 51 of the Roads Act, 1993,
or
 - (iii) The conclusion of any legal proceedings challenging any decision of the First Respondent to approve the said Scheme (as remitted to it) pursuant to section 51 of the Roads Act, 1993.
5. Dismiss the Applicants' application for a certificate of leave to appeal pursuant to s.50A(7) of the Planning and Development Act, 2000.
6. Grant Liberty to Apply to all parties hereto, including liberty to apply for a further extension of the time period for which section 217(6A) of the Planning and Development Act, 2000 (as amended) provides.
7. Order that the First Respondent shall pay 70% of the Applicants' costs of the proceedings (including all reserved costs, the costs of the application for final orders and the costs of all of the Applicants' written submissions), such costs to be adjudicated in default of agreement. There shall be no other order as to costs.