



[2026] IEHC 487

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2025.0001301]

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

BETWEEN

MARCIA D'ALTON, MELLA LEONARD AND NORMA LOMBARD

APPLICANTS

AND
AN COIMISIÚN PLEANÁLA

RESPONDENT

AND
CORK COUNTY COUNCIL

NOTICE PARTY

(No. 2)

<i>Date of impugned decision:</i>	<i>7 July 2025</i>
<i>Date proceedings commenced:</i>	<i>29 August 2025</i>
<i>Date of principal judgment:</i>	<i>26 June 2026</i>
<i>Consequential hearing:</i>	<i>6 & 9 July 2026</i>
<i>Date draft judgment circulated:</i>	<i>13 July 2026</i>

JUDGMENT of Humphreys J. delivered on Friday 17 July 2026

1. In *D'Alton v. An Coimisiún Pleanála (No. 1)* [2026] IEHC 414 (Unreported, High Court, 26 June 2026) I quashed the commission's order in part. Of the consequential matters that now arise, the primary issue is remittal.

The order outlined in the principal judgment

2. The substantive part of the order as originally phrased was:
- "(i) subject to submissions on the form of the order and to the proposed order under s. 50A(9) of the 2000 Act, there be an order based on relief 1 claimed in the statement of grounds by way of an order of certiorari removing for the purposes of being quashed the order of the respondent (ABP-321292-24) made on 7 July 2025 granting permission with conditions under section 177AE of the Planning and Development Act 2000, as amended, to the notice party for the upgrading of an existing 2-kilometre-long pedestrian and cycle route in the townlands of Ardmore and Pembroke, Passage West, Co. Cork, in part only, namely such part of the order as may be agreed or directed by the court following further submissions consistent with the judgment;
 - (ii) subject to submissions on the form of the order, if requested by the council, there be an order providing for an amendment under s. 50A(9) of the 2000 Act in such terms as may be agreed or directed by the court following further submissions consistent with the judgment, noting that the council's position on remittal is reserved at the present time;"

The consequential issues

3. The consequential issues were:
- (i) extent of the partial quashing;
 - (ii) possible amendment;
 - (iii) remittal;
 - (iv) if remittal, to what point; and
 - (v) the status of the inspector's report on remittal.

Issue 1 – extent of the partial quashing

4. Following some discussion there was no major objection to partial quashing as follows, which will preserve both the historic features and also the greenway widening to the maximum extent save where that interferes with the car park. The reason the car park has to be maintained for now is that to remove the car park and keep the wall where it is would result in parking space reduction about which the applicants and council are not agreed, and in relation to which there is no obviously otherwise acceptable solution. The ultimate order was the one that was therefore reasonably acceptable to both sides (the commission being fairly neutral on the consequential issues):

- (i) to quash the demolition between chainage 1610 to 1780 so the wall and stile in their entirety remain;
 - (ii) to quash the widening between chainage 1660 to 1740 so the car park remains; and
 - (iii) all chainage *per* drawing GA0011.
5. That order was made on 9 July 2026 without major objection.

Issue 2 – amendment

- 6.** Section 50A(9) of the Planning and Development Act 2000 (the 2000 Act) states:
“(9) If an application is made for judicial review under the Order in respect of part only of a decision or other act to which section 50(2) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.”
- 7.** As the council’s proposed amendment (which would have eliminated the car park) was not acceptable to the applicants, they withdrew that proposal. They informed me that they did not need an amendment to deal with the junction points between the widened and existing greenway. So amendment does not need to be considered further because it is not sought. In some cases a court could amend of its own motion, but this is not a case where there is any particular reason to do that.

Issue 3 – whether there should be remittal

- 8.** The applicants’ main point about remittal was that it should not apply to partial quashing.
- 9.** The effect of s. 50A(9A) of the 2000 Act as inserted by the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (the 2022 Act) is to provide that if a developer requests remittal, the court shall make such an order unless it would not be lawful to do so:
“(9A) If, on an application for judicial review under the Order, the Court decides to quash a decision or other act to which section 50(2) applies, made or done on an application for permission or approval, the Court shall, if requested by the applicant for permission or approval, remit the matter to the planning authority, the local authority or the Board, as may be appropriate, for reconsideration, subject to such directions as the Court considers appropriate, unless the Court considers, having regard to the circumstances of the case, that it would not be lawful to do so.”
- 10.** That applies to an application under s. 177AE, as here, which comes within s. 50 of the 2000 Act.
- 11.** As pointed out in *Quinn v. An Bord Pleanála* [2022] IEHC 699 (Unreported, High Court, 16 December 2022), it is a matter of public record that the stated rationale for the amendment was to address what was alleged to have been judicial reluctance that was said to have manifested itself recently to remit matters to planning authorities, in that it was erroneously suggested that some judges refer matters back to the planning authority to make a new decision while other judges are allegedly reluctant to do so. As outlined in that case (based on a survey of caselaw over the previous years), the facts do not bear out that purported rationale in any way whatsoever. The pre-2022 caselaw shows a strong tendency to remit if requested, save where to do so would be unlawful, across a wide range of judges dealing with planning cases before that date. Judicial inconsistency is just a kind of bedrock cultural cliché that once it takes hold simply cannot be dislodged by evidence, regardless of how totally unfounded it is. In fact planning jurisprudence is extraordinarily consistent given the number, nature and complexities of the issues being dealt with. A similar cliché is the fixed false belief that there is an increasing tendency to quash decisions on technicalities – there is no such tendency and insofar as there are examples of this they are certainly not increasing as far as recent jurisprudence is concerned.
- 12.** The applicants perhaps have a point in purely drafting terms in the sense that sub-s. (9) refers to quashing part only of a decision whereas sub-s. (9A) refers to quashing the decision *simpliciter*.
- 13.** However, the text of sub-s. (9A) is capable of being read as covering partial quashing, and the context and purpose support such an interpretation. If I am wrong about that, the pre-2022 caselaw supports a presumption in favour of remittal which logically applies to partial remittal also.
- 14.** There is no valid rationale to the contrary, which can be demonstrated as follows. The applicants argue that in effect remittal of a part of a consent would take it “out of context”. But everything has to be compared not with the rigged comparator of a hypothetical ideal answer (everything fails when measured against perfection) but against the realistically available alternative.
- 15.** Here the realistically available alternative is a new planning application covering the quashed part – which is no more and no less an “out of context” application than remitting the quashed part.
- 16.** So there is no tangible violence being done to environmental objectives or contextual planning or anything else that would not arise by way of the alternative approach of a new application.
- 17.** To put it another way, the applicants make the reasonable-sounding point that the matter needs to be viewed “in the round” – but that ship has sailed. The legislation allows partial quashing which means that whatever happens thereafter is less than “in the round” in the type of sense meant by the applicants. As indicated in other caselaw (see e.g. *Connolly v. An Coimisiún Pleanála* [2026] IEHC 224 (Unreported, High Court, 17 April 2026) at 70 to 80 and the caselaw cited), a development

can be sought and consented in parts provided that European assessments under the habitats and environmental impact assessment (EIA) directives cover the full project at each stage, something the commission will no doubt be conscious of in this case. The Supreme Court has recently upheld the principle that an overall development can be consented in parts: *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28 (Unreported, Supreme Court, Murray J., 4 July 2024) (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring). So this is settled law.

18. An “in the round” demand sounds as always plausible but there is a big distinction between an in-the-round *decision* on all elements, and an in-the-round *assessment* of all elements at each stage. A demand for all elements of a consent to be **decided** together is utterly unworkable, inappropriate and without legal basis, as explained in *Connolly*. What can and should be done is that European **assessments** take an overall view when considering any individual part of an overall project, but remittal of a part of the project does not prevent that.

19. Thus I would be minded to remit the matter subject only to clarification of the procedure as below.

Issue 4 – remittal to what stage

20. As outlined in *Quinn*, there are numerous judgments specifying the stage to which remittal should be made.

21. In *Crofton Buildings v. An Bord Pleanála* [2024] IESC 12 (Unreported, Supreme Court, Donnelly J., 10 April 2024) (O'Donnell C.J., Charleton, O'Malley and Woulfe JJ. concurring), the Supreme Court cautioned against unnecessary use of the power to specify a stage to which the matter is remitted, noting that its strictures against excessive directions regarding the conduct of remittal were “relevant” (para. 61), and while the matter to be remitted may vary depending on the procedure adopted, the basic position was that the commission would be presumed to act in accordance with law and fair procedures.

22. That said, it is not inconsistent with those principles to consider the possibility that where the parties so agree, or where there is some particular legal feature of the case making it appropriate notwithstanding lack of complete agreement, there may be cases where it may be appropriate to consider the stage to which remittal can be made. In that context, subsequent to (and obviously conscious of) *Crofton*, O. 103 r. 36(1) RSC was enacted providing as follows:

“Final orders

36. (1) In Planning & Environment proceedings, where the Court makes a final order remitting a matter to a respondent for reconsideration:

(a) the Court may, having heard the parties, specify the stage of the procedure to which the matter shall be remitted, with liberty to apply;

(b) in the case of an order remitting a matter for reconsideration under Directive 2003/4/EC, the Court, having heard the parties, shall issue such directions for the timely, adequate and effective resolution of the matter as are appropriate in the circumstances, including directions resolving any legal or procedural questions likely to arise on the remitted consideration, or a direction that the matter be prioritised on the basis of the original date of the request for information rather than the date of remittal.”

23. For context, r. 36(1)(b) was introduced to address concerns that had arisen in the Aarhus Convention Compliance Committee. The new rule is discussed with approval by the committee in its report of 6 October 2025 (<https://unece.org/sites/default/files/2025-11/ECE.MP.PP.2025.55.E.pdf>) which was effectively endorsed by the Parties to the Convention (including the State and the EU) in November 2025: https://unece.org/sites/default/files/2026-04/Aarhus_MoP8_VIII_8h_Ireland_aec.pdf. While the Aarhus implementation bodies are within the UN system, the convention itself is part of the EU legal order and views expressed in the UN context are not without relevance to the meaning of the convention as a matter of European law. People who dismiss Aarhus as “just” a UN convention are missing that point and perhaps other points. As put by the CJEU in the judgment of 8 March 2011, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*, C-240/09, ECLI:EU:C:2011:125:

“30 The Aarhus Convention was signed by the Community and subsequently approved by Decision 2005/370. Therefore, according to settled case-law, the provisions of that convention now form an integral part of the legal order of the European Union (see, by analogy, Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 36, and Case C-459/03 *Commission v Ireland* [2006] ECR I-4635, paragraph 82). Within the framework of that legal order the Court therefore has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see, inter alia, Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 4 to 6, and Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7).”

24. In the present case there is no particularly pressing reason to specify the stage at which remittal should take place, subject to the last heading below. The applicants raised the issue of public participation, but if that is a problem it can be addressed within the remitted process rather than by way of directions in advance. Thus, consistent with *Crofton*, I would be inclined not to give

any directions in relation to the stage of (or otherwise in relation to) remittal subject to clarification of the final point.

Issue 5 – status of the inspector’s report on remittal

25. The final question arising from the applicants’ submissions, but one that affects the foregoing, is the status of the inspector’s report on remittal. In deference to the Supreme Court in *Crofton*, considering that issue here is not just an issue of whether directions could be appropriate and if so to what effect – it is also and perhaps primarily a question of what relief is appropriate, *i.e.*, should the inspector’s report be quashed in part depending on whether it will play a continuing role. The applicants did not seek that relief specifically but the court can grant unpleaded relief provided that it comes strictly within the pleaded grounds, as held by the Supreme Court in *Treascon*.

26. The key distinction is between what information should be published and what information should be considered.

27. As to what information should be published, s. 146 of the 2000 Act provides (emphasis added):

“Reports and documents of the Board.

146.—(1)

(2)

(3) Where, during the consideration by it of any matter falling to be decided by it in performance of a function under or transferred by this Act or any other enactment, the Board either—

(a) is required by or under this Act or that other enactment to supply to any person documents, maps, particulars or other information in relation to the matter, or

(b) considers it appropriate, in the exercise of its discretion, to supply to any person such documents, maps, particulars or information (‘relevant material or information’), subsection (4) applies as regards compliance with that requirement or such supply in the exercise of that discretion.

(4) It shall be sufficient compliance with the requirement referred to in subsection (3) for the Board—

(a) where an environmental impact assessment report or a remedial environmental impact assessment report (as construed in accordance with section 177F), or both such reports, is or are, as the case may be, submitted with an application or request, or any such report is received by the Board in the course of considering an application, request or appeal, to place on its website for inspection and make available for inspection and purchase by members of the public at the offices of the Board from as soon as may be after receipt of such report—

(i) the application, request or appeal, as the case may be,

(ii) the environmental impact assessment report or remedial environmental impact assessment report, or both such reports, as the case may be,

(iii) the notice or notices, as the case may be, published in one or more newspapers circulating in the area in which it is proposed to carry out the development, or in which the development is located, indicating the nature and location of the proposed development or development, as the case may be,

(iv) any further information furnished by, or alterations to the terms of the development made by, or a revised environmental impact assessment report or a revised remedial environmental impact assessment report (as construed in accordance with section 177F), or both such reports, as the case may be, furnished by, the person who is proposing to carry out or who has carried out the development, as the case may be, and

(v) any other relevant material or information, or

(b) in any other case, to do both of the following (or, as appropriate, the Board, in the exercise of the discretion referred to in subsection (3), may do both of the following):

(i) make the relevant material or information available for inspection—

(I) at the offices of the Board or any other place, or

(II) by electronic means; and

(ii) notify the person concerned that the relevant material or information is so available for inspection.

(5) Within 3 days following the making of a decision on any matter falling to be decided by it in performance of a function under or transferred by this Act or under any other enactment,

the documents relating to the matter—

(a) shall be made available by the Board for inspection at the offices of the Board by members of the public, and

(b) may be made available by the Board for such inspection—

(i) at any other place, or

(ii) by electronic means,

as the Board considers appropriate.

(6) Copies of the documents referred to in subsection (5) and of extracts from such documents shall be made available for purchase at the offices of the Board, or such other places as the Board may determine, for a fee not exceeding the reasonable cost of making the copy.

(7) The documents referred to in subsection (5) shall—

(a) where an environmental impact assessment was carried out, be made available for inspection on the Board's website in perpetuity beginning on the third day following the making by the Board of the decision on the matter concerned, or

(b) where no environmental impact assessment was carried out, be made available by the means referred to in subsection (5)(b) for a period of at least 5 years beginning on the third day following the making by the Board of the decision on the matter concerned."

28. For context, there is a possible question-mark over the compliance with EU law principles of legal certainty in relation to the provision that web-publication is only statutorily required in limited circumstances, which may be considered in C-507/25 Thompson. In fact it is the commission's practice generally but the statutory language falls short of that. This aspect seems to be somewhat rectified by s. 385 of the Planning and Development Act 2024, but as against that the section seems to radically narrow publication of documents other than decisions and reports. This may raise new issues that do not arise under the 2000 Act:

"Making available of documents by Commission

385. (1) The Commission shall, within 3 working days of the making of a decision on any matter falling to be decided by it in the performance of its functions under this Act or any other enactment, give copies of the documents and information relating to that matter—

(a) where the matter relates primarily to land, to the planning authority in whose functional area the land is situated, or

(b) where the matter relates primarily to a maritime site, to the Maritime Area Regulatory Authority.

(2) The Commission shall publish on a website maintained by it or on its behalf copies of—

(a) every decision of the Commission on an appeal, application, referral or request, and

(b) every report of a person assigned under section 376 to make a report in relation to an appeal, application, referral or request.

(3) The Commission shall retain all documents and information arising from the exercise of any of its functions for not less than 12 years from the date of the creation or receipt of the document or information by the Commission.

(4) The Commission shall make the documents and information referred to in subsection (3), other than such documents as may be prescribed, available for inspection, at the offices of the Commission during office hours, by—

(a) the owner or occupier of the land or maritime site to which the documents or information relate, or

(b) a person acting on the authority of such owner or occupier.

(5) Copies of the documents or information made available under subsection (4), and of extracts from such documents or information, shall be made available for purchase at the offices of the Commission, or such other place as the Commission may determine, by persons referred to in that subsection on payment to the Commission of a fee not exceeding the reasonable cost of making the copy.

(6) Subsection (5) is without prejudice to the Freedom of Information Act 2014, the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, and the European Communities (Access to Information on the Environment) (Amendment) Regulations 2018 (S.I. No. 309 of 2018).

(7) In subsection (2) 'application' includes a submission of a scheme for approval under section 49 of the Roads Act 1993, an application for approval under section 51 of the Roads Act 1993, and an application for a railway order under section 37 of the Transport (Railway Infrastructure) Act 2001."

29. The concept of "documents relating to the matter" is broad and covers all formal documents, including inspectors' reports. That includes the original version of reports that were later amended, and includes reports that were withdrawn (e.g., due to irregular use of AI): *Environmental Trust Ireland v. An Coimisiún Pleanála* [2026] IEHC 387 (Unreported, High Court, Holland J., 19 June 2026), *Carrownagowan Concern Group, Rumberger & Henley v. An Bord Pleanála & Futureenergy* [2024] IEHC 300 (Unreported, High Court, 20 May 2024). In the latter case and in *Clonres CLG v. An Bord Pleanála (No. 2)* [2021] IEHC 303, [2021] 5 JIC 0706 (Unreported, High Court, 7 May 2021), I suggested that quashed decisions and invalid submissions might fall outside the definition but I have had occasion to revisit that view to some extent in the light of *Environmental Trust* at 61, where Holland J. said "I confess that I have difficulty seeing how mere publication of a document

after the final decision has been made can retroactively contaminate the decision-making process". I think Holland J.'s comment illustrates the distinction, which my earlier view erroneously failed to focus on, between publication of material and reliance on the material. That said, my comment about invalid submissions still holds good. These were never part of the process so do not fall to be published – they have to be completely disregarded from the outset. But a decision or other document that was later quashed or an inspector's report that is later amended or withdrawn was *de facto* a part of the process for at least some time, and so is a document relating to the matter. I agree, on reflection, with Holland J., that the integrity of the procedure can be upheld otherwise than by non-publication, and we will turn to that in a moment. But that approach does suggest that even quashed materials should be published – albeit presumably with an annotation recording the quashing.

30. To conclude this point as a final passing comment on *Environmental Trust*, there isn't anything inherently wrong with using AI in the decision-taking process. The issue is that such use must be in an institutional context (*i.e.*, the organisation overall should determine whether and how it is to be used and with what safeguards). With that important qualification, if the simplified binary choice were to be to commend the trailblazing of the inspector in *Environmental Trust* or denounce such a heterodox approach, I would lean towards the former – overreactions quickly become anachronisms in this kind of rapidly evolving technological space. It certainly hasn't been shown so far as I can see that the AI did any particular substantive harm in that case. I do note however that as of time of drafting the present ruling (16 July 2026) the original inspector's report has still not been published on the website page for that case (<https://www.pleanala.ie/en-ie/case/318302>) which (to put it neutrally) does not immediately strike one as a particularly enthusiastic embracing of the finding of Holland J. that the statute was breached by non-publication, a finding with which I respectfully agree for what it's worth.

31. Turning then to the second aspect, as I understand matters (and I fall to be corrected by the commission if this understanding is inadequate), the way the commission draws the distinction between publication and consideration in the case of remitted matters is that all of the original papers remain on their website under the page for the original case number, the remitted matter is given a new case number, and the "file" for the new case excludes papers that are to be disregarded in the new process.

32. In order therefore to determine whether any particular order or direction is necessary here, it would be of assistance if the commission would clarify how this would operate in the case of the partial quashing and remittal here, and in particular, whether the original inspector's report going to form part of the file and/or is regard otherwise to be had to it. If so, one might need to consider thinking in terms of partial quashing of the report or some other form of direction, although in principle that shouldn't be necessary. Possibly there are other options not immediately apparent, or possibly no action is required, but clarification would help.

33. I assume that the judgment(s) of the court in a remitted matter will also be available to the inspector/commission on the remitted file and that nothing from the court is required to facilitate that.

34. The agreed directions for further comments were as follows:

Commission to respond in writing by 24 July 2026
Other parties to respond in writing by 31 July 2026
For Mention 21 September 2026

35. Once the commission has clarified matters and the other parties have had the opportunity to respond the matter can be progressed to a final order.

36. I would like to record my thanks to the applicants and to all of the lawyers involved for their unfailingly courteous, professional and helpful assistance. As I have previously sought to make clear, insofar as any points advanced are not being accepted in this or any other given judgment, that is solely to do with the inherent merits of such points and is no reflection on those making or instructed to convey such points, a distinction that most certainly should be, and I believe generally is in fact, self-evident to all concerned.

37. On 13 July 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 15, 195 to 198 and 204 of Practice Direction HC 137 issued by the President of the High Court, to give an opportunity to address matters such as errors/ambiguities on the basis set out below.

38. Parties are required to:

- (i) Read the draft or have their legal representatives if applicable do so on their behalf.
- (ii) Identify any matters falling within the below.
- (iii) Positively communicate with the court in writing in response to the draft by the deadline specified, such responses to be emailed to the court and uploaded to ShareFile, either stating that they have no comments or setting out the comments.

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

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

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

- (i) informing the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment;
- (ii) informing the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any apparent typographical, factual, legal or other errors in the draft;
 - (b) any apparent ambiguity or other matter in the draft that could unnecessarily multiply issues or complicate the further processing of the matter;
 - (c) any redaction of personal or other information that a party wishes to request;
 - (d) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any submission as to why such reference is not relevant or otherwise should not be included or as to why such matter if included should not lead to the proposed conclusion;
 - (e) any other matter in the draft judgment that the party considers should be omitted;
 - (f) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view); and

- (g) any other proposals as to the wording (as opposed to substance) of the decision if the proposed wording causes any issue for a party for any identified reason; and
 - (iii) assisting the court by providing views on such matters if any on which views are specifically invited in the draft judgment.
- 41.** In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.
- 42.** The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.
- 43.** The deadline for such comments from the commission was to be 11:00 on Wednesday 15 July 2026 and from other parties was to be 11:00 on Thursday 16 July 2026.
- 44.** Responses were as follows:
- (i) Applicants: The applicants sought confirmation that they could comment on issue 4. In that regard, as noted above, issue 4 is "subject to" (para. 24) issue 5, *i.e.*, issue 4 is not finalised and depends on submissions by the parties, following initial clarification by the commission, on foot of issue 5 to the extent that those matters have implications for issue 4.
 - (ii) Commission: The commission sought further time to consider the issue identified, and agreed directions were furnished. I indicated the intention to issue the present judgment in the meantime. The commission also helpfully pointed out a typo.
 - (iii) Council: no comments.
- Order**
- 45.** The order made on 9 July 2026 was:
- (i) to quash the demolition between chainage 1610 to 1780 so the wall and stile in their entirety remain;
 - (ii) to quash the widening between chainage 1660 to 1740 so the car park remains; and
 - (iii) all chainage *per* drawing GA0011
- 46.** For the foregoing reasons, it is now ordered that:
- (i) the commission be requested to clarify the issues identified in the judgment subject to replies by other parties within agreed timelines; and
 - (ii) the matter be listed at 09:30 on 21 September 2026 for further directions.