

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

[2026] IEHC 613

H:JR:2022:350

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

Between

COLBEAM LIMITED

Applicant

and

DÚN LAOGHAIRE-RATHDOWN COUNTY COUNCIL

Respondent

and

WENDY JENNINGS and ADRIAN O’CONNOR

Notice Parties

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JUDGMENT OF MR JUSTICE DAVID HOLLAND DELIVERED 23 SEPTEMBER 2026

INTRODUCTION¹

1. The Applicant (“Colbeam”) seeks leave, under section 50A(7) PDA 2000² to appeal my judgment³ (the “Judgment” – with which this judgment should be read) refusing Colbeam certiorari quashing the decision of the Respondent, (the “Council” and “DLRCC”), made on 10 March 2022,
 - to make its “2022 Development Plan”.⁴
 - to adopt, in the 2022 Development Plan, the amendments made by way of three motions, passed in adopting the draft development plan at a Council meeting on 15 and 18 December 2020, which
 - by agreement, continued⁵ the application to the Colbeam Lands of an INST Objective⁶ as to development of institutional lands and open space requirements imposed on such developments.⁷
 - by agreement, amended the terms of the INST Objective to require that such open space be specifically public open space.⁸
 - by 27 votes to 4, with 1 abstention, rezoned Colbeam’s 2.12-hectare site at Our Lady’s Grove, Goatstown Road, Dublin 14 (“the Colbeam Lands”), from residential to open space use zoning.⁹
2. S.50A(7) PDA 2000¹⁰ allows appeal of judgments such as the Judgment only where the High Court “certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal shall be taken”. These requirements are cumulative and have been explained in the caselaw as described below.

PROPOSED POINTS OF LAW & DLRCC’S PRIMARY SUBMISSION

3. Colbeam submits that the Judgment involves the following points of law of exceptional public importance of which it seeks certification for appeal.

POINTS 1 & 2: MATERIALITY OF IRRELEVANT CONSIDERATIONS

4. The posited Question 1 is

1 Headings are for navigational assistance only and are not determinative of content.

2 Planning and Development Act, 2000, as amended.

3 [2025] IEHC 437.

4 Dún Laoghaire-Rathdown County Development Plan 2022 to 2028.

5 i.e. from the 2016 Development Plan.

6 This objective is also described, usually as to its specific application to the OLG Campus as an “INST Designation”. Usage is not entirely consistent and in effect both phases are interchangeable.

7 Motion 123.

8 Motion 122.

9 Motion 124.

10 Planning and Development Act, 2000, as amended.

Whether, as held at §§85 and 86 of the Judgment, Hogan J.'s views in Killegland¹¹ were obiter, and if so, whether they have been transmuted to binding ratio by O'Donnell J. in Bartra.¹²

5. The posited Question 2 is

Whether, when a planning authority takes into account an irrelevant consideration in making a decision, it is necessary, to justify *certiorari* of that decision, that the irrelevant consideration be "*material*"¹³ or a "*real and significant reason for the decision*".¹⁴

POINT 3: PRESUMPTION IN FAVOUR OF VALIDATING INFERENCES

6. The posited Question 3 is

Whether the presumption of validity dictates that a court should prefer evidential inferences favourable to upholding a decision over those unfavourable to such an outcome.¹⁵

POINTS 4 & 5: RELEVANCE OF POLITICAL CONSIDERATIONS & PROPRIETY OF INHIBITION OF PERMISSIONS IN MATERIAL CONTRAVENTION

7. The posited Question 4 is

Whether when, in making a development plan, the elected members of a planning authority take into account political rather than planning considerations, they take into account irrelevant considerations.¹⁶

8. The posited Question 5 is

Whether, when making a development plan, a decision is taken by the elected members for the purpose of preventing An Coimisiún Pleanála from exercising a power under statute to grant planning permission in material contravention of a development plan, it is taken for an improper purpose or is based on an irrelevant consideration.¹⁷

9. It is convenient to note at this stage that the Council's primary submission is that the result of the case would be unaffected were Colbeam's posited questions certified by me and upheld on appeal, as the Judgment held that the impugned irrelevancies were marginal to the Impugned Decision¹⁸ - which was the salient finding which defeated the assertion in Killegland based on irrelevant considerations.

¹¹ Killegland Estates Limited v Meath County Council [2023] IESC 39.

¹² Bartra Property (Dublin) Ltd v Dún Laoghaire-Rathdown County Council [2024] IEHC 535.

¹³ Judgment §§76, 83, 94 (p.74 (Proposition v), 124.

¹⁴ Judgment §§96, 124.

¹⁵ Judgment §99.

¹⁶ Judgment §112(f), p.82.

¹⁷ Judgment §112.

¹⁸ Transcript 16 February 2026 15:07.

LAW ON CERTIFICATION OF APPEALS

10. The **Glancré**¹⁹ principles, on which applications such as this are decided, are well-settled. They were synthesised in **MRRA**²⁰ as follows:

“5. The starting point is identified by Barniville J in **CHASE**²¹:

“The clear intention of the Oireachtas in enacting s.50A(7) (and its statutory predecessors) was that, in most cases, the decision of the High Court on an application for leave to seek judicial review in respect of a planning decision or on an application for judicial review of such a decision should be final and should not be the subject of an appeal”.

6. The posited ground of appeal must involve a point, or points, of law.

7. I must assume for the purpose of this application that, as to that point of law, my decision may well be wrong: see **Callaghan**²² and **Dublin Cycling**.²³ In this regard, the Court should not concern itself with the merits, strength or weakness of the parties’ arguments on the point or prospects of success on any appeal. The Court should take the intended appellant’s case on the point at its height: see **CHASE**. However, taken at its height, the point of law must be stateable. Clearly, an unstateable point of law cannot be of exceptional public importance and it cannot be desirable in the public interest that an appeal be heard on an unstateable point of law.

8. Thereafter, the overarching principles are those identified in s.50A(7) PDA 2000 - that the point of law be of exceptional public importance and that it is desirable in the public interest that an appeal should be taken. On those bases, the principles applicable, though not set in stone,²⁴ have been elaborated in the cases and were summarised by MacMenamin J. in **Glancré**.²⁵ That summary has been approved and glossed in many cases since. I attempt to synthesise the current state of the Glancré principles as follows.²⁶ I have indicated where I have drawn some inferences from the principles.

a. The application for certification of leave to appeal should be made promptly - ideally within the normal appeal period.²⁷

b. The jurisdiction to certify must be exercised sparingly. Most applications for a certificate to appeal fail.²⁸

19 Glancré Teoranta v An Bord Pleanála [2006] IEHC 250.

20 Monkstown Road Residents’ Association v An Bord Pleanála [2023] IEHC 9, Holland J. §8.

21 Cork Harbour Alliance for a Safe Environment v An Bord Pleanála [2022] IEHC 231 (High Court (Judicial Review), Barniville J, 26 April 2022) §32.

22 Callaghan v An Bord Pleanála & Element Power [2015] IEHC 493 at §13.

23 Dublin Cycling Campaign CLG v An Bord Pleanála #2 [2021] IEHC 146 at §29.

24 Cork Harbour Alliance for a Safe Environment v An Bord Pleanála [2022] IEHC 231 §31.

25 Glancré Teoranta v An Bord Pleanála and Mayo County Council [2006] IEHC 250.

26 Much of what follows is taken also from Cork Harbour Alliance for a Safe Environment v An Bord Pleanála [2022] IEHC 231 §31 et seq and was there in turn taken from earlier cases – some of which I have footnoted here. I have not excised reference to principles irrelevant in this particular case.

27 S.A. v Minister for Justice and Equality (No. 2) [2016] IEHC 646, Hellfire Massy Residents Association v An Bord Pleanála [2021] IEHC 636 §6(i), Clifford & Sweetman v An Bord Pleanála [2021] IEHC 645, Stanley v An Bord Pleanála [2022] IEHC 671.

28 Cleary Compost And Shredding Ltd V An Bord Pleanála (No 2) [2018] IEHC 347; Dunnes Stores V An Bord Pleanála [2016] IEHC 263.

- c. *The point of law must arise out of the decision of the High Court and not merely from discussion or consideration of a point of law during the hearing. A point the court did not decide cannot amount to a point of law of exceptional public importance.*
- d. *I would add that it seems to me to be a necessary implication of the principle that “The point of law must arise out of the decision of the High Court” that the point of law must reflect a correct understanding of the decision of the High Court, read as a whole.*
- e. *The point of law should be actually determinative of the proceedings, not one which, if answered differently, would leave the result of the case unchanged.²⁹ The same point can be phrased in terms that a point of law is moot if it raises no dispute the resolution of which in the posited appeal is capable of leading to the reversal or variation of the order made by the High Court.³⁰*
- f. *The point of law must be formulated with precision so that indicates how it is determinative of the proceedings and should not invite a discursive, roving, response from the Court of Appeal.³¹*
- g. *It seems to me to be a necessary implication of the principle that the point of law should be determinative 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.*
- h. *The requirement goes substantially further than that a point of law emerges in or from the case. That it be of exceptional public importance is a clear and significant additional requirement.*
- i. *Normal statutory rules of construction apply. So, inter alia, the word ‘exceptional’ must be given its normal meaning. That imposes a very high hurdle - the point of law must not just be important, but of unusual or untypical importance.³²*
- j. *The test is not simply whether the point of law transcends the individual facts of the case. Such an interpretation would fail to apply the word ‘exceptional’. Since most points of law are of some importance, the point of law must transcend well beyond the individual facts and the parties in the case.*
- k. *Where leave is refused in an application for judicial review, (i.e. where substantial grounds have not been established) a question may arise as to whether, logically, the same material can constitute a point of law of exceptional public importance such as to justify certification for appeal.*

²⁹ See also S.A. v Minister for Justice and Equality (No. 2) [2016] IEHC 646, Clifford & Sweetman v An Bord Pleanála [2021] IEHC 645. Stanley v An Bord Pleanála [2022] IEHC 671.

³⁰ Clonres/Conway v An Bord Pleanála & Crekav Trading [2022] IESCDT 71.

³¹ See also S.A. v Minister for Justice and Equality (No. 2) [2016] IEHC 646, Hellfire Massy Residents Association v An Bord Pleanála [2021] IEHC 636 §6(i), Clifford & Sweetman v An Bord Pleanála [2021] IEHC 645. Stanley v An Bord Pleanála [2022] IEHC 671.

³² Cleary Compost and Shredding v An Bord Pleanála (No 2) [2018] IEHC 347; Dunnes Stores v An Bord Pleanála [2016] IEHC 263.

- l. The requirements of exceptional public importance and that appeal be desirable in the public interest are cumulative. They may overlap but to some extent may require separate consideration.*
- m. Some affirmative public benefit from an appeal must be identified. This suggests that, to be certified, a point must be such that it is likely to resolve other cases.*
- n. The law in question must be in a state of uncertainty, evolution or lack of clarity. It is for the common good that such law be clarified so as to enable the courts to administer that law, not only in the instant, but in future such cases.*
- o. ‘Uncertainty’ cannot be ‘imputed’ to the law by an applicant simply by raising a question as to the point of law. Merely raising an argument on the proposed point of law which the Court has rejected does not mean that the law is uncertain. The uncertainty must arise over and above this, for example, in the daily operation of the law in question.*
- p. The fact that the point of law raises a novel issue does not necessarily mean that the law is uncertain or evolving. It is not, however, necessary to point to other decisions which conflict with the decision of the High Court on the point of law. However, where the point is novel and the law is evolving, it is likely that the Court will find it of exceptional public importance.*
- q. The intending appellant must not use the application for leave to appeal as an opportunity merely to reargue the merits which the Court has already decided against that party in its substantive decision. However, it may sometimes be difficult to avoid doing so (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.*
- r. Generally, where, on the posited point of law, the intending appellant has lost in the High Court on the basis of the application of clear and well-established principles to the facts of the case, it will be very difficult to satisfy the cumulative requirements of s.50A(7) of exceptional public importance and that an appeal be desirable in the public interest. Certification is not in principle ruled out in such circumstances but is likely only in exceptional circumstances and is not in any sense the normal or usual position. The closer on the spectrum the posited point of law is to the application of well-established legal principles to the facts of an individual case, the further it is from exceptional public importance.³³ Ordinarily, the basis of any appeal must be that the very legal principles relied upon by the High Court judge were incorrect.³⁴*

³³ BS v Director of Public Prosecutions [2017] IESC DET 134, Quinn Insurance Limited v Price Waterhouse Coopers [2017] IESC 73, [2017] 3 IR 812 and Fitzpatrick v An Bord Pleanála [2018] IESCDET 61.

³⁴ Halpin v An Bord Pleanála [2020] IEHC 218; Stanley v An Bord Pleanála (No. 2) [2022] IEHC 671.

- s. *Conversely, the failure by the Court to apply well-established legal principles to the particular facts of the case may well give rise to a point of law of exceptional public importance, subject to complying with the other principles referred to here.*
- t. *Where the decision which it is sought to appeal was made in the exercise of a wide discretion,³⁵ the exercise of which is governed by criteria of fairness and justice, the applicant for a certificate of leave to appeal faces a particularly uphill task.*
- u. *Generally, it will not be appropriate to grant leave to appeal in respect of a point of law which has not been properly pleaded.³⁶*
- v. *A broad range of factors and considerations may bear on whether an appeal is desirable in the public interest. Those factors include, but are not limited to, the nature of the particular development and the potential consequences of significant further delay in final determination of the case by the courts. Factors relevant to whether an appeal is desirable in the public interest may overlap with other criteria, such as whether it is in the public interest to clarify uncertainty or evolution in the law.*
- w. *In this context, the grant of leave should provide some added value to any matters already before the Court of Appeal.³⁷*
- x. *The Court must have regard to the effect of the 33rd Amendment to the Constitution and the Court of Appeal Act 2014 and, in particular, the “constitutional architecture” they created. While a “leapfrog” appeal from the High Court directly to the Supreme Court is possible, appeal to the Court of Appeal remains the more normal route.*
- y. *It seems to me to follow from the principles set out above, which assume that the judgment which it is sought to appeal may well be wrong in point of law, that the mere assertion that such judgment may set an erroneous precedent which may be followed in later decisions of the High Court will not suffice to justify certification. That observation can be made of more or less any judgment wrong in point of law. Certification merely on that basis would be inconsistent with many of the Glancré principles, including that certification of what is *ex hypothesi* a good appeal on a point of law should nonetheless be “exceptional” and issue “sparingly”. Any implications of these principles for the operation of stare decisis as between decisions of the High Court derive from the clear principle of S.50A(7) PDA 2000 that in most cases of error, even as to a point of law, there should be no appeal. While it is in strictness undesirable as a matter of stare decisis that any judgment in error in point of law should survive, in truth this situation is not at all unusual. Many must be the cases in which arguable – even very arguable – appeals do not proceed for one reason or another or very many possible reasons: for example, the case may settle, or the potential appellant may be risk-averse and decide against appeal.*

³⁵ The example given in CHASE was that of a decision whether to remit a quashed decision to the decision-maker for reconsideration.

³⁶ Ross v An Bord Pleanála (No. 2) [2015] IEHC 484; Hellfire Massy Residents Association v An Bord Pleanála [2021] IEHC 636 §6(iv).

³⁷ See also S.A. v Minister for Justice and Equality (No. 2) [2016] IEHC 646, Hellfire Massy Residents Association v An Bord Pleanála [2021] IEHC 636 §6(i), Clifford & Sweetman v An Bord Pleanála [2021] IEHC 645, Stanley v An Bord Pleanála [2022] IEHC 671.

9. *Not all the foregoing principles arise for application in the present case. Most, if not all, are particular expressions of the three main principles that:*

- *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.*
- *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.”*

11. In **Stapleton**³⁸ it was said that the question posed for certification should be specific and should identify something specific that could make a difference to the result of the case. The following appears:

“It must be emphasised that the perspective taken by the drafter of points of law posited for certification must be both general in its implications and yet particular to the case. The point must be of general public importance transcending the particular facts of the case. Yet it cannot be abstract, must be precise and must arise out of the particular facts and circumstances of the case, the pleadings, and the judgment - such that its determination will be dispositive of the particular case. In drafting, the putative appellant must ride both horses – either alone will not suffice.”

12. **Massey**³⁹ also recites the applicable principles – including that, in order that an appeal be in the public interest, the alleged uncertainty in the law must be creating practical difficulties in the application of the law and evidence of those difficulties must, at least usually, be tendered. (Massey is more absolute that evidence is required but I confess I would not go that far as in some cases the inference may be drawn from the point of law itself and judicial notice taken of its operation in practice.)

LAW – COLBEAM’S GENERAL SUBMISSIONS

13. Colbeam emphasises that a trial judge asked to certify a stateable point for appeal should not weigh its merits - I should assume my judgment may be wrong. (**Lancefort**⁴⁰ and **Dublin Cycling Campaign**⁴¹).

14. Colbeam in particular cites **MRRA** §8:

- c. The point of law must arise out of the decision.
- e. The point of law should be actually determinative of the proceedings.
- m. Some affirmative public benefit from an appeal must be identified.
- n. The law in question must be in a state of uncertainty, evolution or lack of clarity.
- p. ... where the point is novel and the law is evolving, it is likely that the Court will find it of exceptional public importance.

³⁸ Stapleton v An Bord Pleanála & Ors [2025] IEHC 178.

³⁹ Massey v An Bord Pleanála & Curns Energy #4, [2025] IEHC 309, [2025] 5 JIC 3004.

⁴⁰ Lancefort Ltd v An Bord Pleanála Unreported, High Court, Morris J, 23 July 1997.

⁴¹ Dublin Cycling Campaign CLG v An Bord Pleanála Unreported, High Court, MacDonald J, 25 February 2021 at §29.

- v. A broad range of factors and considerations may bear on whether an appeal is desirable in the public interest.

15. Colbeam submits also, that the principles applied by the Supreme Court in determining applications for leave to appeal may guide the High Court if asked to certify an appeal (**Halpin**⁴² and **O'Neill**⁴³).

16. Colbeam submits that uncertainty in the law, such that its appellate determination is desirable, is often important and whether the law is uncertain does not always require competing lines of authority. A certificate may also be granted where:

- a novel point is determined for the first time and where there is scope for an alternative viewpoint (**Callaghan**⁴⁴).
- there is no authoritative appeal court judgment on the point (**Urrinbridge**⁴⁵); even if the High Court is right there is benefit in its authoritative confirmation by the Court of Appeal.
or
- a judgment creates uncertainty in the day-to-day practice of planning and environmental law (**People Over Wind**⁴⁶).

NOVEL ISSUES

17. Without seeking to upset the existing law on the significance of novel issues of law in certification applications, I respectfully observe that

- As observed in **Lissan**⁴⁷ - novelty is really an aspect of the issue of uncertainty in the law. It is not a stand-alone, or of itself a sufficient, basis for certification of appeal.
- Judgments of the High Court are themselves authoritative in the operation of the doctrine of precedent. They create precedent and thereby usually, certainty, not uncertainty, in the law. In by far the greater part, High Court judgments are validly declaratory of the law - including on novel issues. In so doing they bind all lower courts and, on **Worldport**⁴⁸ principles, the High Court itself.
- That the jurisdiction to certify appeal is exercised sparingly is not merely an empirical observation. It is a normative statement. In part that is because High Court judgments are validly declaratory of the law. The logic of the certification requirement of exceptionality is that most novel issues should be authoritatively decided by the High Court.

42 Halpin v An Bord Pleanála [2020] IEHC 218 at §15.

43 O'Neill v An Bord Pleanála [2021] IEHC 58 at §§27 to 29.

44 Callaghan v An Bord Pleanála [2015] IEHC 493, §22.

45 Urrinbridge v An Bord Pleanála, unreported, High Court, MacMenamin J., 26 January 2012.

46 People Over Wind v An Bord Pleanála [2015] IEHC 393, §27.

47 Lissan Coal v An Coimisiún Pleanála & NTA [2026] IEHC 457.

48 Re Worldport Limited [2005] IEHC 189, p.7.

18. As I say, by these observations I do not seek to erase the significance of the novelty of a point of law in certification applications. I merely point out that its significance must not be exaggerated and novelty without more will not yield certification. As I have said, it is really an aspect of the issue of uncertainty in the law.

POINTS 1 & 2 MATERIALITY OF IRRELEVANT CONSIDERATIONS

19. Points 1 and 2 are as follows.

1. **Whether, as held at §§85 and 86 of the Judgment, Hogan J.’s views in Killegland⁴⁹ were obiter, and if so, whether they have been transmuted to binding ratio by O’Donnell J. in Bartra.⁵⁰**
2. **Whether, when a planning authority takes into account an irrelevant consideration in making a decision, it is necessary, to justify *certiorari* of that decision, that the irrelevant consideration be “material”⁵¹ or a “real and significant reason for the decision”.⁵²**

20. A brief explanation here will assist. The point relates to the question whether *certiorari* must issue once it is found that a decision-maker considered an irrelevancy. In Killegland, Hogan J, for a unanimous seven-judge Supreme Court, refused for various reasons to quash the impugned development plan. Some councillors had, in adopting that development plan as it de-zoned particular land,⁵³ articulated legally irrelevant considerations as to the ownership of the lands by a religious body and linking that de-zoning to the re-zoning of other lands.⁵⁴ Hogan J rejected a challenge based on alleged irrelevant considerations as the decision had been taken “*principally for valid planning reasons ... and ... they did not have regard to irrelevant considerations in a manner which was material and central to their decision*”.⁵⁵ Colbeam argued that this conclusion was obiter. I held in the Judgment that, if obiter, it was transmuted to binding *ratio* by Bartra and that if I was wrong in that regard, I was “*content to follow the obiter of a unanimous seven-judge Supreme Court.*”

P1&2 - COLBEAM SUBMISSIONS

21. Colbeam submits that

- a. Points 1 and 2 invite different perspectives on the circumstances in which, and the test to be applied in determining whether, a development plan should be quashed on grounds that the

49 Killegland Estates Limited v Meath County Council [2023] IESC 39.

50 Bartra Property (Dublin) Ltd v Dún Laoghaire-Rathdown County Council [2024] IEHC 535.

51 Judgment §§76, 83, 94 (p.74 (Proposition v), 124.

52 Judgment §§96, 124.

53 from residential to community infrastructure zoning.

54 from rural to residential zoning.

55 Emphasis added.

elected members had regard, in making it, to irrelevant considerations. Both points arise out of the Judgment; their genesis is a dispute regarding the decisive reasoning of the Supreme Court in **Killegland**.

- b. Point 1 identifies a genuine dispute regarding the ratio decidendi⁵⁶ in **Killegland** – in which judgment there is, Colbeam argues, a “latent ambiguity” which creates a “conundrum” not resolved in **Bartra** or by the Judgment⁵⁷ – such that it is plainly important that the applicable test be clarified.
- c. Point 2 identifies a related issue whether, when challenging a development plan for regard to irrelevant considerations, the applicant for judicial review must prove that those considerations were “material and central” to the impugned decision to adopt the new plan (**Killegland**, §109) or whether it suffices to show that those considerations influenced the decision. The former is a significantly higher threshold than the latter.
- d. The case is suitable for appeal in that the consideration in question (the alleged moral obligation of the religious order which had owned the lands – raised by the proposer of the relevant motion) was clearly irrelevant, such that the facts of this case bring into sharp relief the difference between a test whether the irrelevancy was “material and central” to the impugned decision and a test whether it was more than marginal to the impugned decision.⁵⁸

General Law: Irrelevant Considerations

22. Colbeam says that

- a. The starting point of the general law as to regard to irrelevant considerations is that a person affected by an administrative decision is entitled to expect that it be made in accordance with law and be the product of the decision-maker’s consideration of only relevant considerations. They cite **Superstone, Goudie and Walker** to the effect that
 - it is “*almost self-evident*” that a decisionmaker must “*not be influenced by those considerations categorised as irrelevant*”, must act only for proper purposes and must not be motivated by improper purposes or act in bad faith.⁵⁹
 - Acknowledging that it does not follow in every case that a decision must be quashed if irrelevant considerations have been taken into account, “*the decision may be lawful... because it was not in fact influenced by the irrelevant matter*”.⁶⁰ (I observe that this formulation appears to consider that a consideration may be “taken into account” any yet not “influence” a decision.)
- b. The cases support this view of the law.

⁵⁶ i.e. the rationale decisive of the case.

⁵⁷ Transcript 16 February 2026 14:16 & 14:29.

⁵⁸ Transcript 16 February 2026 14:20 et seq.

⁵⁹ Judicial Review (LexisNexis, 6th ed., 2017), §7.76.

⁶⁰ Judicial Review (LexisNexis, 6th ed., 2017), §7.77. emphasis added by Colbeam.

- In **Wednesbury**⁶¹ Lord Greene MR said that a decision-maker must exclude from his consideration matters which are irrelevant to what he has to consider and, if he does not, “may truly be said, and often is said, to be acting unreasonably”. (I observe that the words “may” and “often is” imply that consideration of irrelevancies may, in instances, not invalidate a decision.)
 - Later, in **Hanks**⁶² Megaw J. said that a “consideration” is “something which one takes into account as a factor in arriving at a decision”. He “assumed for the purposes of the case” that where a decisionmaker “has taken into account as a relevant factor something which it could not properly take into account” the impugned decision “normally at least, is invalid. ... I say ‘normally’ because ... there may be cases where the factor wrongly taken into account, or omitted, is insignificant, or where the wrong taken into account, or omission, actually operated in favour of the person who later claims to be aggrieved by the decision.”
 - In **R(Westminster City Council) v Inner London Education Authority**,⁶³ the impugned decision was quashed as irrelevant material “*was a, if not the, major purpose of the decision*”. That case is cited in **Greenfields (IOW)**⁶⁴ as authority that “*a decision which is materially influenced by an improper purpose is liable to be quashed*”.
- c. Here, the range of relevant considerations is prescribed by statute. The procedure for making a development plan is set out principally in sections 11 and 12 PDA 2000. Crucially, s.12(11) provides that, in making the development plan, the elected members “*shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates*”. Section 12(11) exhaustively lists the factors the elected members can consider. Anything else is, by definition, irrelevant.
- d. This is the context in which the Supreme Court decided **Killegland**.

Killegland

23. Colbeam says that

- a. **Killegland** concerned whether Meath County Council’s decision to change the zoning of the applicant’s lands was vitiated by consideration of irrelevancies. Hogan J, for the Supreme Court, identified⁶⁵ and analysed⁶⁶ the issue whether the Council’s reasons were consistent with the PDA 2000.

61 Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 p.229.

62 In Hanks v Minister for Housing and Local Government [1963] 1 QB 199, (p.1020).

63 [1986] 1 WLR 28.

64 R. (Greenfields (IOW) Limited) v Isle of Wight Council [2024] EHC 2107 (Admin), §68 - in the context of a challenge for bias. The decision was overturned on appeal – but not as to bias - R (Greenfields (IOW) Ltd) v Isle of Wight Council [2025] EWCA Civ 488, [2025] PTSR 2013, [2025] EGCS 68.

65 §68.

66 at §§73-80 and §§83-84.

- b. Hogan J cited **Flanagan** and **Griffin**⁶⁷ - in which elected members had made planning decisions contrary to their executives' advice, which decisions were quashed as made for irrelevant personal reasons.
- c. Hogan J found that the Council, in the decision-making process, had made two errors of fact which were irrelevant considerations.⁶⁸ He stated:

*"It is true that both of these considerations — the issue as to the ownership of the lands and the necessity to 'swap' the land — were irrelevant to the planning decision which the councillors were required to make. Unlike the situation disclosed by earlier cases such as **Flanagan** and **Griffin**, it may be said that these considerations were not absolutely central to the de-zoning decision. On the facts of the present case, they were really at best marginal considerations and they cannot be said to have thereby vitiated the overall decision to de-zone."*⁶⁹

- d. Hogan J. upheld the impugned plan as the elected members "did not have regard to irrelevant considerations in a manner which was material and central to their decision".⁷⁰

24. Colbeam says that

- a. There is a great distance between a consideration that is "*absolutely central*" or "*central*" and a consideration that is "*marginal*" in the decision-making process. I agree.
- b. The decisive reasoning in **Killegland** is at §85 - that the irrelevancies were "*at best marginal*" considerations. They did not influence the decision – which was not the product of appraisal of irrelevancies. §109, suggesting that consideration of an irrelevance can be overlooked unless it is "*material and central*" to the decision, is *obiter dicta*. Having decided that the considerations in question were "*at best marginal*", the Court had no need to consider the effect of irrelevant considerations neither marginal nor central.
- c. §85, to the effect that the considerations in question were "*at best marginal*", is much more consistent with the general law and the requirements of s.12(11) PDA 2000.

67 §83 – citing *Flanagan v Galway City and County Manager* [1989] IR 66 and *Griffin v Galway City and County Manager*, unreported, High Court, 31 October 1990.

68 §84 et seq.

69 §85 - Emphasis added by Colbeam.

70 §109 - Emphasis added by Colbeam.

Why leave to appeal should be granted

25. Colbeam says that

- a. The Judgment held⁷¹ that while a “rigorously logical” analysis of **Killegland** was consistent with Colbeam’s submission, there was support for the contrary view and that, even if §109 of **Killegland** were obiter, it was “transmuted to binding ratio by **Bartra**”.⁷²
- b. The “true meaning” of **Killegland** is that the test is whether an irrelevant consideration was “marginal”, so that it did not influence the decision. If so, it can be overlooked. If not - if it did influence the decision-maker – that is regard to an irrelevant consideration.⁷³
- c. If the statement at §109 of **Killegland** that the irrelevant consideration in that case was not “material and central” was obiter, this would have significant consequences. The High Court
 - must follow the Supreme Court’s ratio decidendi - “the enunciation of the reason or principle on which the question before a [superior] court has been decided”⁷⁴.
 - is not bound by obiter dicta - statements peripheral to the ratio.⁷⁵
 - Should, as a matter of judicial comity, usually follow the earlier judgment of another judge of the same court unless there are substantial reasons for believing that the earlier judgment was wrong (**Worldport**).
- d. Accordingly, if in **Killegland** §85 is ratio and §109 is obiter, that §109 may have been transmuted to binding authority by the High Court in **Bartra** might bind me (**Worldport**)⁷⁶ - though Colbeam observes that it is not evident that the point that §109 is obiter was argued in **Barta**. But it would not bind the Court of Appeal or the Supreme Court.
- e. Accordingly, Point 1 raises a real issue as to the decisive reasoning of the Supreme Court in **Killegland**, which would benefit from appellate clarification.
- f. I should say that in reply in oral argument⁷⁷ Colbeam appeared again to argue that even marginal influence of an irrelevancy – influence “in any appreciable degree” - required certiorari of an impugned decision. But Colbeam nonetheless accepted that where an irrelevancy had a 1% or 2% influence on a decision, that mightn't be considered to be material. Yet Colbeam also argued⁷⁸ that the decisive reasoning in **Killegland**⁷⁹ - on its best interpretation from Colbeam’s point of view - was that the irrelevancies were “marginal considerations” such that they did not vitiate the decision impugned in that case.

⁷¹ §76.

⁷² §§85 – 86.

⁷³ Colbeam’s written submissions §30.

⁷⁴ Halsbury’s Laws of England, Civil Procedure, Vol. 11 (2015), §25.

⁷⁵ Halsbury, loc. cit., §26.

⁷⁶ On this point, it is not evident that O’Donnell J. was addressed on any potential ambiguity in **Killegland**, such that **Worldport** deference should apply.

⁷⁷ Transcript 16 February 2026 16:11 et seq.

⁷⁸ Transcript 16 February 2026 16:17.

⁷⁹ At §85.

26. As to Point 2, Colbeam submits that

- a. If the Council’s decision was influenced by an irrelevant consideration, certiorari follows.
- b. This is consistent with the ratio of **Killegland**, with the general law as hitherto understood and with s.12(11) PDA 2000.
- c. To require proof that an irrelevant consideration was central to the decision-making process would go much further than the cases to date and is not required by **Killegland**, correctly understood.
- d. The Judgment⁸⁰ grappled with the test and the difficulties in formulating and applying it. It held, on the one hand, that “*marginal or merely ancillary regard by a decision-maker to an irrelevant consideration*” would not warrant certiorari. On the other hand, it accepted that it was not necessary positively to show that the irrelevant consideration was central to the decision or that “*but for regard to an irrelevant consideration, the decision would have gone the other way*”. It formulated the test as whether, in all the circumstances, it was objectively reasonable that “*the irrelevant consideration was probably a real and significant reason for the decision*”.
- e. The correct test is whether an irrelevant consideration influenced the decision, i.e. was not a marginal factor which could be disregarded. This is a difficult issue, which the Judgment carefully analysed. The threshold to be applied and the intensity of the judicial review of the decision-making process is clearly important. It is sharply in focus here, as Colbeam established that at least one irrelevancy was taken into account.
- f. This issue discloses a question of law of transcendent importance, which would benefit from appellate consideration. The same issue will arise in every challenge to a decision by elected members on the ground that an irrelevant consideration has been taken into account.

P1&2 – DLRCC SUBMISSIONS

27. DLRCC submits that

- The ‘influence’ test for which Colbeam argues is effectively that applied in the Judgment. So, Point 2, if answered differently, could not be determinative - “would leave the result of the case unchanged”.⁸¹ It is, rather, a question of application of the law (not a basis for certifying appeal).
- On the specific facts of this case, the ‘influence’ test for which Colbeam argues would not change the result. Colbeam accepts that an irrelevant consideration would have to be more than marginal to justify certiorari and itself relies on caselaw to the effect that an “insignificant” irrelevant consideration does not invalidate a decision.

⁸⁰ §§94-97 – sub heading “Collection of the Foregoing”.

⁸¹ MRRA §8(e).

28. DLRCC says

- a. It is not clear what the point of law is in Point 1.
- b. **Stapleton**⁸² is authority that the question posed for certification for appeal should be specific and should identify something specific that makes a difference – it should not invite an essay or a discursive, roving response.
- c. The answer to Point 1 could not determine the proceedings – even if answered differently to the Judgment, it would leave the result of the case unchanged.⁸³ The Judgment held⁸⁴ that if Killegland was obiter it had been transmuted to ratio by Bartra and, if not, “I am content to follow the obiter of a unanimous seven-judge Supreme Court.” Whether the views expressed by Hogan J. were obiter or binding, the Judgment is clear that those views were being followed and so the result would be the same.
- d. Also, Point 1 concerns the application in the Judgment of both any dicta in **Killegland** and the judgment in **Bartra**. The application of established principles to particular facts cannot ground an application for leave to appeal. For example, in **Massey**, Humphreys J. stated that the question should not be one of application of law to particular facts but rather one of the substance, content and interpretation of law. See also **Rushe**, **Stanley Eco Advocacy** and **Leech**.⁸⁵
- e. Nothing in Point 2 requires appellate clarification - the law on “irrelevant considerations” is clear. It is stated in **Wednesbury**⁸⁶ and **Sharpe**.⁸⁷ decisionmakers “must disregard” irrelevancies.
- f. However, relief in judicial review is discretionary - **Reilly**⁸⁸ lists factors relevant to the exercise of that discretion. Ample authority permits a court to decline relief where appropriate having regard to the materiality of the complaint. **Croft**⁸⁹ is authority that certiorari does not issue for “*mere technicalities. There has to be a point of genuine substance that makes a real difference to an objective interest that warrants protection.*”

29. DLRCC also asserts that

- a. At §75 the Judgment holds that “[w]hatever else may be said of the foregoing as the ratio of Killegland, it at very least acknowledges that, as to vitiation of a decision for irrelevant considerations, their materiality counts – that is to say, the extent matters to which those considerations weighed in – provided reasons for – the impugned decision.” Having considered the

⁸² Stapleton v An Bord Pleanála [2025] IEHC 178.

⁸³ MRRA §8(e).

⁸⁴ §86.

⁸⁵ Rushe v An Bord Pleanála [2020] IEHC 429, Stanley v An Bord Pleanála [2022] IEHC 671, Eco Advocacy CLG v An Bord Pleanála [2024] IESCD 62 and Leech v An Bord Pleanála [2025] IEHC 157.

⁸⁶ Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223.

⁸⁷ P. & F. Sharpe Ltd v Dublin City and County Manager [1989] I.R. 701. – “the decision-making authority must have regard to all relevant and legitimate factors which are before it and must disregard any irrelevant or illegitimate factor which might be advanced.”

⁸⁸ Reilly v An Coimisiún Pleanála [2025] IEHC 659, §71.

⁸⁹ Croft v Dublin City Council [2025] IEHC 656.

later cases (**Bartra** and **DAA**⁹⁰), the Judgment concludes⁹¹ that “[t]he cases are clear that materiality matters in considering certiorari for regard to irrelevancies”.

- b. Whether a consideration is irrelevant and material is determined by reference to the facts and context of the particular case.
- c. Colbeam’s point also relies on the finding in the Judgment⁹² that “the question, as to the materiality of an irrelevancy to an impugned decision, is whether there is, on a conspectus of the admissible evidence and in all the relevant circumstances, an objectively reasonable belief that the irrelevant consideration was probably a real and significant reason for the decision”. Whether a consideration is “material” or “a real and significant reason” for the decision amounts to essentially the same question. The Judgment does not seek to alter the caselaw “that materiality matters”. Rather it attempts to “synthesise the cases”.⁹³ Insofar as it finds that an irrelevancy must be a “real and significant reason for the decision” it is not altering or changing the view that “[t]he cases are clear that materiality matters in considering certiorari for regard to irrelevancies”.
- d. Thus, Colbeam’s point as to whether an irrelevant consideration must be “*material*” and its point as to whether an irrelevant consideration must be a “real and significant reason for the decision” both fall foul of the principle that “*[t]he law in question must be in a state of uncertainty, evolution or lack of clarity*”.⁹⁴

30. DLRCC asserts that Colbeam

- a. submits that it suffices, to ground certiorari, that the irrelevant consideration “influenced”⁹⁵ the decision to adopt a development plan and that it did so in this case.
- b. accepts, however, that where an irrelevant consideration has been taken into account, nonetheless “*the decision may be lawful... because it was not in fact influenced by the irrelevant matter*”.⁹⁶ DLRCC submits that this amounts to essentially or effectively the same thing as demonstrating that the consideration was material to the Impugned Decision in the terms set out in the Judgment:

“In the end, it may be difficult to improve on the word “material”. Ultimately, and on the authority cited, I cannot accept that marginal or merely ancillary regard by a decision-maker to an irrelevant consideration, represented by isolated undisciplined utterances of elected members, requires a hair trigger response by way of certiorari. No consideration of proportionate or practical judicial review of public law decisions appears to me to require such a course. On the other hand, I do not think that, before it will trigger certiorari, regard to an irrelevant consideration must be shown positively to have

⁹⁰ DAA PLC v Fingal County Council [2024] IEHC 589.

⁹¹ §94.

⁹² §96.

⁹³ §96.

⁹⁴ MRRA §8(n).

⁹⁵ Defined as to have an effect on (Concise Oxford Discretionary (11th ed)) or to affect or change how someone thinks (Cambridge Dictionary online).

⁹⁶ §15 of Colbeam’s submissions.

*been “central” to the decision. Much less do I think that an applicant for judicial review need show as a probability that, but for regard to an irrelevant consideration, the decision would have gone the other way”.*⁹⁷

- c. appears to accept⁹⁸ that, as to marginal considerations at any rate, the Judgment correctly found that for a consideration to materially affect a decision it would have to be more than “marginal or merely ancillary”. Colbeam itself relies on authority (**Hanks**) that an irrelevancy does not invalidate a decision where it is “*insignificant*” (as a consideration influencing the decision⁹⁹); the corollary is that to vitiate a decision an irrelevancy must be significant in that sense.
- d. argues¹⁰⁰ that to require an applicant for judicial review grounded in consideration of irrelevant considerations to prove that the irrelevancy was central to the decision-making process would go significantly further than the cases to date and is not required by **Killegland**. However, DLRCC observes, the Judgment found that an irrelevant consideration need not be “central to the decision” to warrant certiorari - so that aspect of Colbeam’s argument falls away. Thus, DLRCC submits, the ‘influence’ test for which Colbeam argues is effectively the same as that adopted in the Judgment.¹⁰¹

31. DLRCC observes that the Judgment itself expresses the test in terms of the “influence” of a consideration on a decision:

- *“Why quash a decision by reference to a consideration which did not influence its outcome?”*¹⁰²
- *“So, it seems to me notable that Moules ... frames the relevancy principle in terms of ‘the factors that influenced the decision-maker’.”*¹⁰³
- *“In similar vein, Biehler states that ... it seems it is not necessary that the irrelevant consideration was the dominant influence on the decision maker to act as he did, provided its influence was at least material.”*¹⁰⁴ In this regard Colbeam itself relies on **Greenfields (IOW)** to the effect that “*a decision which is materially influenced ... is liable to be quashed*”.¹⁰⁵ (I note in particular, Biehler’s proviso.)
- *“... counsel’s proposition is not generally unreasonable as to weighing evidence and a proposers’ arguments are likely to be thought influential.”*¹⁰⁶
- Speaking of Cllr Saul’s ill-disciplined remark in respect of “*controversies over former religious sites*” and “*regularly hearing about religious land being sold to developers*”, the Judgment found that “[t]here is no possibility that these remarks influenced the members’ earlier decisions as to the Colbeam lands.”¹⁰⁷

⁹⁷ §94.

⁹⁸ §27 of Colbeam’s submissions.

⁹⁹ I have added this gloss but it is plainly the sense of the use of the word “significant”.

¹⁰⁰ §34 of Colbeam’s submissions.

¹⁰¹ §94.

¹⁰² §35.

¹⁰³ §37; underlining in the Judgment.

¹⁰⁴ §38; underlining in the Judgment.

¹⁰⁵ 19 of Colbeam’s submission.

¹⁰⁶ §98, ‘Proposition’ vii, p.76.

¹⁰⁷ p.41, Note v.

32. DLRCC observes that Colbeam’s submissions¹⁰⁸ themselves recognise the close relationship between materiality and influence in the context of the Judgment: *“the question for the court is whether the irrelevant consideration was material in the sense that it influenced the decision”*.

33. DLRCC observes that the only irrelevant consideration identified in the Judgment¹⁰⁹ was Cllr Saul’s invocation, at the Council meeting on 18 December 2020, of an alleged moral obligation of the religious order who previously owned the Site. However, the Judgment records¹¹⁰ that even *“though [Cllr Saul] was a proposer ... he was the only [Councillor] to invoke this consideration and he did so explicitly only once and it is difficult to consider that he could have done so in any lesser degree.”* The Judgment continues¹¹¹

“I have attempted above to collect conclusions from the caselaw as to the materiality to an impugned decision of the consideration of an irrelevant consideration. Whatever view one takes as to what ought to be the proper formulation of the law in this regard,¹¹² I see no reason to infer from Cllr Saul’s single remark that the irrelevant issue of moral obligation formed a material element of the members’ considerations and/or reasons in zoning Colbeam’s lands as open space.”

Cllr Saul’s remark *“can be viewed as marginal, merely ancillary, non-central or as an isolated undisciplined utterance not hair-triggering certiorari.”*

“Cllr Saul’s error cannot be seen as material. This seems to me to be a case in which the observation of Pickford LJ London & Provincial Electric Theatres,¹¹³ cited above, applies.”

Pickford LJ had said in that case:

“... probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think that there are probably few debates in which someone does not suggest as a ground for decision something which is not a proper ground; and to say that, because somebody in debate has put forward an improper ground, the decision ought to be set aside as being founded on that particular ground is wrong.”

34. In DLRCC’s view,

- “whatever view one takes as to what ought to be the proper formulation of the law”, Cllr Saul’s “isolated undisciplined utterance”, of the type described by Pickford LJ, will not “hair-trigger certiorari”. This is especially so where it was a “marginal” consideration - which Colbeam appears to accept would not vitiate a decision.

¹⁰⁸ §40.

¹⁰⁹ §§100-107.

¹¹⁰ §123.

¹¹¹ §124, 125 & 126.

¹¹² Emphasis added.

¹¹³ R (London & Provincial Electric Theatres) v London County Council [1915] 2 K.B. 466 cited at §66 of the Judgment.

- Therefore, on the specific facts of this case, applying Colbeam’s test would not change the result and so Points 1 and 2 should not be certified.¹¹⁴

P1&2 - RELEVANT CONTENT OF THE JUDGMENT

35. As to Points 1 and 2, and at the costs of some repetition here, I identify what seems to me to be the important content of the Judgment as follows:

Killegland

74. Counsel for Colbeam says that it is not clear what test Hogan J in fact applied. I agree that there is a large range in the spectrum between “absolutely central” and “marginal” considerations. So this observation, adequate to that case on its facts, could arguably be said to have more generally left uncharted the watershed either side of which vitiation is, and is not, required.

75. Whatever else may be said of the foregoing as the ratio of Killegland, it at very least acknowledges that, as to vitiation of a decision for irrelevant considerations, their materiality counts – that is to say, the extent matters to which those considerations weighed in – provided reasons for – the impugned decision.

76. True, a rigorously logical view of the foregoing might suggest that Hogan J considered that taking irrelevant considerations into account will not vitiate a decision only where, as on the facts found by Hogan J, they were “marginal” – to which principle the words “absolutely central” were merely a contrasting gloss. However, that might be to read a judgment as if a statute. And in any event, Hogan J returned to these issues in his conclusion. His conclusion was that the councillors in Killegland, unlike those in Flanagan and Griffin, “took this decision principally for valid planning reasons in accordance with the” PDA 2000 and “did not have regard to irrelevant considerations in a manner which was material and central to their decision.” This observation suggests that, to vitiate a decision, the irrelevant considerations must be “material and central” to it. This view is also at least consistent with Hogan J’s observation that the reasons given by the councillors in Killegland for disregarding the planning advice of the officials were “for the most part” planning-based reasons. Hogan J did not repeat Humphreys J’s reference to the legal advice to the councillors.

Killegland/Bartra Obiter?

85. There was argument at the bar as to whether:

Though in the conclusions section of the judgment a unanimous seven-judge Supreme Court, the view of Hogan J that there was “no basis in law by which the validity of that decision can properly be impugned” was due, *inter alia* to that fact that the impugned decision was taken “principally for valid planning reasons in ... and ... they did not have regard to irrelevant considerations in a manner which

¹¹⁴ §8(e) of MRRA.

was material and central to their decision” was obiter. If obiter, that view was transmuted to binding ratio by Bartra.

86. *I think it was so transmuted. But if I am wrong, I am content to follow the obiter of a unanimous seven-judge Supreme Court.*

WAS REGARD TO ALLEGED MORAL OBLIGATION MATERIAL?

123. *As I have said, by invoking the alleged moral obligation of the Order, Cllr Saul invoked an irrelevant consideration. He should not have done so. However, and though he was a proposer of two of the motions, he was the only one to do so. Given he did so, he did so explicitly only once and it is difficult to consider that he could have done so in any lesser degree. There is no doubt however, that the great thrust of such debate as there was on the motions was directed to the simple propositions that:*

The INST Objective of the OLG Campus had long-established the Council’s view that the proper planning and sustainable development of the area required both the maintenance of the open character of the OLG Campus and the maintenance of 25% of it in open space.

The realisation of those aims required the zoning of the Colbeam Lands as open space.

There is no suggestion that these were not valid planning considerations and they were at very least the primary considerations which informed the zoning decision.

124. *I have attempted above to collect conclusions from the caselaw as to the materiality to an impugned decision of the consideration of an irrelevant consideration. Whatever view one takes as to what ought to be the proper formulation of the law in this regard, I see no reason to infer from Cllr Saul’s single remark that the irrelevant issue of moral obligation formed a **material element** of the members’ considerations and/or reasons in zoning Colbeam’s lands as open space.*

125. *Even if his later remark that “the reason why it is not currently is use is because it was sold, and the Order and owners of the land did not protect, and did uphold the designation and they sold it” is seen as of a piece with Cllr Saul’s reference to moral obligation, I consider that it or they can be viewed as marginal, merely ancillary, non-central or as an isolated undisciplined utterance not hair-triggering certiorari. In view of the analysis which I propose of materiality of regard to an irrelevant consideration, I consider that there is not, on a conspectus of the admissible evidence and in all the relevant circumstances, an objectively reasonable belief that the alleged moral obligation of the Order was probably a real and significant reason for the decision. Nor was any real harm done to objectively reasonable confidence in the decision on the part of the public and participants in the process.”*

P1&2 – DISCUSSION & DECISION

36. Properly understood, it is clear that the Judgment does not seek to alter, or even to develop, the law as to materiality of irrelevant considerations. It seeks merely to identify that law and apply it to the facts of the case.

37. There is no doubt but that, whether viewed as a matter of illegality or as a matter of the discretionary nature of remedy in judicial review, to justify quashing an impugned decision regard to an irrelevancy must have materially influenced the decision. It is perfectly clear, at least, that **Killegland** was not obiter as to the general issue of materiality of irrelevant considerations. Hogan J dismissed the application for certiorari and could only have done so by dismissing the challenge based on regard to irrelevant considerations. The argument is as to the degree of materiality to the impugned decision – the degree of influence on that decision - required to justify certiorari.

38. As has been seen, Colbeam submits that

- The “true meaning” of **Killegland** is that the question is whether an irrelevant consideration was “marginal”, so that it did not influence the decision. Only then can it be overlooked and the impugned decision upheld in judicial review.
- The correct test is whether an irrelevant consideration influenced the decision, i.e. was not a “marginal” factor which could be overlooked.
- The correct test is also that described in **Hanks**¹¹⁵ - whether the irrelevancy was “insignificant”. Indeed, it is precisely because it says the “marginal” standard is correct that Colbeam now argues that Hogan J’s use of the phrase “*material and central*” was obiter.

39. Clearly, the words “marginal” and “insignificant” are, in the present context, synonyms. Certainly, Colbeam did not suggest that any difference between the standards they represent could affect the result of this case. Indeed, Colbeam in this application propounded both as the test of materiality.

40. I do not find useful the formulation by **Supperstone, Goudie and Walker** which I have characterised as asserting that a consideration may be “taken into account” and yet not “influence” a decision. As was said in **Hanks**, “A ‘consideration,’ ... is something which one takes into account as a factor in arriving at a decision.” At least usually, to take something into account is to give it weight to it - to let one’s course be affected by it – **Coyne**.¹¹⁶ In **Killegland**, Hogan J identified the issue as “whether irrelevant considerations were taken into account”.¹¹⁷ The learned authors’ formulation seems to me an example of the phenomenon identified in **Hanks**: a multiplicity of words causing confusion and, I would add, fine linguistic and semantic distinctions incapable of meaningful discriminatory application to actual factual matrices. Taking Colbeam’s best possible

¹¹⁵ In **Hanks v Minister for Housing and Local Government** [1963] 1 QB 199, (p.1020).

¹¹⁶ **Coyne v ABP, Ireland & EngineNode** [2023] IEHC 412 §21.

¹¹⁷ **Killegland Estates v Meath County Council & Giltinane** [2023] IESC 39, [2023] 12 JIC 2109 §73.

view of Killegland, it decided that the irrelevancies in that case “*were really at best¹¹⁸ marginal considerations, and they cannot be said to have thereby vitiated the overall decision*”

41. Importantly, whether an irrelevancy influenced a decision is a question of fact - **ILEA**.¹¹⁹ Being a question of fact its discernment, as a matter of probability and whether or not by inference, is a matter of consideration of and attribution of weight to the available evidence. The Judgment approached the matter in that way: “This seems to me to be a case in which the observation of Pickford LJ London & Provincial Electric Theatres, cited above, applies. Put another way, the facts here are closer to Killegland and Bartra than they are to DAA v Fingal.”¹²⁰

42. To ask whether something is material to a question is to ask whether it matters in answering that question. The question is whether an impugned decision should be quashed. A consideration which does not influence a decision is immaterial and cannot ground certiorari. The question which really arises is whether an irrelevancy which has or may have influenced a decision, but in minimal degree, can be immaterial such that the decision should not be quashed.

43. The Judgment

- Noted Colbeam’s position at trial: “that if in making a decision 1% weight is attributed to an irrelevancy and 99% weight is attributed to relevant factors, the decision must be quashed.”¹²¹ At the hearing of the certificate application, counsel for Colbeam was initially slightly less dogmatic – stating that even the least influence of an irrelevancy on the decision may suffice to vitiate it.¹²²
- Declined to accept that “marginal or merely ancillary regard by a decision-maker to an irrelevant consideration, requires a hair trigger response by way of certiorari.”
- held¹²³ that even “though [Cllr Saul] was a proposer ... he was the only [Councillor] to invoke this consideration and he did so explicitly only once and it is difficult to consider that he could have done so in any lesser degree.”
- Found that the irrelevant considerations at issue in the present case “can be viewed as marginal” to the Impugned Decision.

118 Perhaps one might have said “at worst” but the thrust is clear.

119 R (Westminster City Council) v Inner London Education Authority, [1986] 1 All ER 19, [1986] 1 WLR 28, 84 LGR 120, 130 Sol Jo 51, [1986] LS Gaz R 359. Glidewell J said: “It thus becomes a question of fact for me to decide, upon the material before me, whether in reaching its decision of 23 July 1984, the staff and general sub-committee of ILEA was pursuing an unauthorised purpose, namely, that of persuasion, which has materially influenced the making of its decision.”

120 §126.

121 §36, citing Transcript Day 1 p134.

122 Transcript 16 February 2026 14:11.

123 §123.

44. In other words, and whatever any doubts as to the applicable standard of materiality of influence of irrelevant considerations on an impugned decision, the Judgment applied the law as Colbeam now says it is and on the most “Colbeam-friendly” view of Killegland, applied it to the facts of the case and refused certiorari on that basis.

45. Put another way, there is no uncertainty in the law, as set down in Killegland, but that marginal regard to an irrelevancy will not yield certiorari. And the Judgment held that the regard to an irrelevancy in the present case was marginal.

46. In my view, counsel for Colbeam, in mobilising the bald statement in **Sharpe**¹²⁴ requiring disregard of irrelevancies as in tension with **Killegland**, correctly adverted to an authoritative general statement of the law in Sharpe. But, as to the detail of the law in this regard, he put greater weight than it can credibly bear on that general statement in Sharpe. Materiality and degree of materiality of the irrelevant consideration to the impugned decision were not, as far as I can see, in issue in Sharpe. Finlay J in Sharpe cannot be read as laying down that marginal or infinitesimal (1%) influence of an irrelevancy on an impugned decision requires certiorari. In the end, the posited tension between Killegland and Sharpe is artificial.

47. Though it is not essential to the view I take, that view is amplified by my noting also that the finding in the Judgment that the influence of the irrelevant consideration on the impugned decision was marginal is a finding of fact. Colbeam intimates no challenge to that finding – rather, in its written submissions, it propounds marginality of influence as the applicable test. Further the phrase in the Judgment “*Whatever view one takes as to what ought to be the proper formulation of the law in this regard*” intimates that, taking Colbeam’s case at trial at its height, as to the degree of influence of an irrelevant consideration which will suffice to invalidate the decision, on the facts as found regarding that degree of influence, its case failed.

48. I should add that at hearing Colbeam orally argued, as I understood it, for a distinction, which it considered the Judgment elided, between the illegality of consideration, however marginally influential, of an irrelevant consideration, and the discretionary refusal of remedy on the basis that it was marginally influential.¹²⁵ I do not find that a useful distinction in this case – or one which transmutes the resultant question of illegality into a point of law of exceptional public importance. It seems to me that it is not of exceptional public importance whether, as to a matter which will not affect the result of the case, one characterises marginal regard to an irrelevant consideration as sounding in illegality or in discretion to refuse relief. I do not say that distinction between illegality and discretionary refusal of relief is illogical or intellectually dissatisfying or inevitably unimportant or non-determinative in all cases. Nor do I disagree that the distinction may in a given case shift the onus of proof from an applicant as to illegality to a respondent as to discretionary refusal of relief. But I cannot see the distinction as of exceptional public importance to any extent it arises from the Judgment in this case. Whether it is to be properly viewed as illegality or as a basis for discretionary refusal of relief where, as a matter of fact, the influence of the irrelevant consideration was

124 P. & F. Sharpe Ltd v Dublin City and County Manager [1989] I.R. 701. – “the decision-making authority must have regard to all relevant and legitimate factors which are before it and must disregard any irrelevant or illegitimate factor which might be advanced.”

125 E.g. Transcript 16 February 2026 14:11 et seq.

marginal, the result – refusal of certiorari – would not be changed by resolution of the distinction in Colbeam’s favour.

49. I should address Colbeam’s emphasis on the fact that Councillor Saul was the proposer of the relevant motion and that Blayney J in **Flanagan**¹²⁶ treated the utterance of an irrelevancy by such a person as very significant (in Flanagan the proposer said that were planning permission refused the applicant would have to emigrate as his business would fail and the seconder said that the applicant employed five people who otherwise would be a burden on the State). As counsel said, in the present case, the irrelevancy was uttered made by the proposer of the motion and was never contradicted.¹²⁷ The Judgment addresses that factor as follows:

“I do not think Blayney J intended this remark as a proposition of law – much less a proposition of law to be mechanistically applied. In fairness, counsel’s proposition does not go that far.”¹²⁸ In my view, Blayney J was making a contextualised observation on the proper inference to be drawn on the evidence before him. All being equal, counsel’s proposition is not generally unreasonable as to weighing evidence and a proposers’ arguments are likely to be thought influential. But an entitlement in the court to draw a particular inference should not be confused with a “test”. It does not, per se, imply an obligation to draw that inference.¹²⁹ All is often not equal. An inference of material effect is made on a conspectus of the evidence and on consideration of all the circumstances. Context is usually vital.”

50. In this light, I consider that, as to the significance of the fact that the irrelevancy was uttered by the proposer of the relevant motion, the most I could reasonably be accused of on appeal is the misapplication of the law to the facts of this case – as to the weight to be attributed to Councillor Saul’s status as proposer of the relevant motion. I do not see that such a misapplication of the law to the facts, if it was a misapplication, is certifiable as an error of law of exceptional public importance.¹³⁰

51. That the issue is one of weight of evidence in the application of the law is perhaps illustrated by an example posited by counsel for Colbeam: he said: *“If the proposer of the motion stands up and says we should be favouring white Irish nationals and we should be making decisions that encourage them, it would be extremely difficult for the authority to persuade the Court that was not an irrelevant consideration that was taken into account ...”* I can readily see that, taken in its context, counsel is likely to be correct in most – or all but all – such cases. And the more heavily the proposer urged such a reasoning on his/her colleagues, the more readily the court would be so persuaded. However, as I have observed, context is vital and the Judgment held¹³¹ that even “though [Cllr Saul] was a proposer ... he was the only [Councillor] to

¹²⁶ Flanagan v Galway City and County Manager [1990] 2 IR 66.

¹²⁷ Transcript 16 February 2026 14:47.

¹²⁸ Emphasis added.

¹²⁹ Footnote from the Judgment: Transcript Day 1, p139. Counsel for Colbeam said “... the Court is entitled to draw an inference that they affected the decision-making process. And that, in my respectful submission, is the correct test” citing “Killeghland and DAA in the round”. However, in fairness to counsel, I should record that he went on to submit that, on the evidence, I was obliged to draw the inference that the members had taken irrelevancies into account.

¹³⁰ This issue was canvassed at Transcript 16 February 2026 14:28 et seq.

¹³¹ §123.

invoke this consideration and he did so explicitly only once and it is difficult to consider that he could have done so in any lesser degree.”

52. Counsel for Colbeam¹³² also emphasised and characterised the statutory position as “quite unusual” in that s.12(11) restricted the councillors to consideration only of *“the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.”* I do not see that either as unusual or as assisting Colbeam: the section merely identifies what is relevant and provides, by the word “restricted”, that all else is irrelevant. It reflects the general law as to the exclusion of the latter from consideration. But there is no dispute here as to what was or was not irrelevant. The only dispute is as to what, if any material, part those irrelevancies played in the making of the Impugned Decision.

53. In argument counsel for Colbeam fairly accepted¹³³ that there is no rule of law that as soon as a councillor expresses an irrelevant view then the Council is hamstrung and can make no decision for fear that the other 25 or 30 Council members may have taken that view into account. He accepted that such a situation raised, rather, a question of inference from the evidence. He further accepted that

- It was a counsel of prudence but not a rule of law that in such a case steps should be taken to impress on the councillors that the consideration in question was irrelevant and should be excluded from their minds.
- Where such steps were not taken - if nobody said anything about it - the Court would be entitled to draw the inference that had been taken into account, or it was at least a consideration.

The difficulty with that argument, from Colbeam’s point of view, is that it amounts to no more than a complaint that I drew the wrong inference of fact from the evidence as to what influenced the Impugned Decision. Such a complaint is not certifiable for appeal – as Colbeam accepted.¹³⁴

54. Accordingly, Colbeam’s success on Points 1 and 2 could not alter the outcome of the case and, in any event, Points 1 and 2 do not raise issue of law of exceptional public importance. Therefore, I refuse to certify Points 1 and 2 for appeal.

¹³² Transcript 16 February 2026 14:34.

¹³³ Transcript 16 February 2026 14:43 et seq.

¹³⁴ Transcript 16 February 2026 14:49.

POINT 3 - PREFERENCE OF VALIDATING INFERENCES

55. The posited Question 3 is

Whether the presumption of validity dictates that a court should prefer evidential inferences favourable to upholding a decision over those unfavourable to such an outcome.¹³⁵

P3 - RELEVANT CONTENT OF THE JUDGMENT

56. The Judgment records¹³⁶ that counsel for Colbeam states eight “*propositions of law*”¹³⁷ as subtending his case. It comments thereon. Here, the following are relevant:

<i>Colbeam’s 8 Propositions of Law</i>	<i>Comment</i>
<i>vi. As a zoning decision is made by a deliberative assembly, some latitude must be afforded as to the provision of a statement of reasons.</i> ¹³⁸	<i>This is correct – though the word “some” should not be applied so as to excessively diminish the latitude allowed.</i> <i>As Hogan J observed in Killegland, reasons for collective decisions may not come “neatly packaged”. A common-sense approach is required - as is at least some faith in the capacity of the generality of members to ignore the irrelevant.</i>
<i>But the deliberative nature of the process means also that it will be difficult for a deliberative assembly to rebut an inference that matters raised at a meeting of the members were not taken into account.</i>	<i>This is not a proposition of law. It is at most a general observation on weighing evidence. And, at that, it is over-elaborate. It seems to me to confuse presumptions and inferences – though I accept that the usage of rebuttal as to both is common. But, strictly, only presumptions may be rebutted. Inferences are either drawn or they are not. They are not drawn and then rebutted.</i> <i>Whatever the weight of this proposition in general terms, it yields to the propositions that:</i> <i>The question is not whether an inference is to be rebutted. It is whether the inference is to be drawn.</i> <i>The onus of proof that an inference of material effect should be drawn remains at all times on the applicant for judicial review.</i> <i>The obligation is to form an overall view, on a conspectus of the evidence and in light of all relevant circumstances, whether the inference should be drawn. Or, to put it another way and more simply: the obligation is to ask on that conspectus and, in that light, what were the reasons for the decision? You stand back,</i>

¹³⁵ Judgment §99.

¹³⁶ §98.

¹³⁷ Transcript Day 1 p59.

¹³⁸ The terms of this proposition were clarified at hearing – Transcript Day 2 p70.

Colbeam's 8 Propositions of Law	Comment
	<i>look at the decision as a whole, read it as valid if reasonably possible and ask yourself what does it mean?</i> <i>Notably, when pressed that this proposition amounted to an assertion that it will be difficult for a deliberative assembly to rebut an inference that "any matter" raised at a meeting required certiorari if an irrelevancy, counsel for Colbeam demurred.¹³⁹ He did so on the basis that the proposition had to be considered in the context of the other propositions he put. I accept that as a general proposition but remain unclear how it answers my question.</i>
<i>vii. As to whether regard was had to a consideration, the identity of the person raising it is relevant.</i> <i>In particular, if it is raised by the person moving the motion, it is more likely that it was taken into account.</i>	<i>This approach clearly informed the decision in Flanagan,¹⁴⁰ in which Blayney J, as to personal considerations irrelevant to the planning decision at hand, said "And since these matters were referred to by the proposer and seconder, and advanced as reasons for passing the resolution, they must have been taken into account by the members of the County Council in coming to their decision ...".</i> <i>However, I do not think Blayney J intended this remark as a proposition of law – much less a proposition of law to be mechanistically applied. In fairness, counsel's proposition does not go that far. In my view, Blayney J was making a contextualised observation on the proper inference to be drawn on the evidence before him.</i> <i>Notably as to context, his observation was followed by a further observation, as to an earlier meeting of councillors and the applicant for permission, the effect of which, Blayney J considered, had been such that "it would have been virtually impossible for the members ... to exclude from their minds ... how the applicant would be personally affected if they did not pass the resolution."</i> <i>All being equal, counsel's proposition is not generally unreasonable as to weighing evidence and a proposers' arguments are likely to be thought influential.</i>

¹³⁹ Transcript Day 1 p109.

¹⁴⁰ Flanagan v Galway City and County Manager [1990] 2 IR 66.

Colbeam's 8 Propositions of Law	Comment
	<i>But an entitlement in the court to draw a particular inference should not be confused with a "test". It does not, per se, imply an obligation to draw that inference.¹⁴¹</i> <i>All is often not equal. An inference of material effect is made on a conspectus of the evidence and on consideration of all the circumstances. Context is usually vital.</i>

57. The Judgment also states:

99. *In fairness to counsel for Colbeam, I should record that, whereas he had introduced¹⁴² his 8 propositions as "of law", in reply¹⁴³ he said that when I look at the primary facts and the issues brought up in debate, I am entitled to and should infer that they were taken into account unless something to the contrary is shown, but am not obliged to so infer. I accept counsel's view that the presumption of validity cannot displace a proper evidential inference. However where, as is not infrequently the case, multiple views or inferences are reasonably possible, the presumption of validity may well require preference of the view which validates a decision over that which would invalidate it."*

58. It will be seen from the foregoing that

- The observation impugned in Point 3 engages with an issue which arose in argument.
- The Judgment describes the process of inference as follows:

"The obligation is to form an overall view, on a conspectus of the evidence and in light of all relevant circumstances, whether the inference should be drawn. Or, to put it another way and more simply: the obligation is to ask on that conspectus and, in that light, what were the reasons for the decision? You stand back, look at the decision as a whole, read it as valid if reasonably possible and ask yourself what does it mean?"

"An inference of material effect is made on a conspectus of the evidence and on consideration of all the circumstances. Context is usually vital."

59. The actual question to be answered in the case, as relevant to Point 3, was what inference should be drawn from the primary facts as to the materiality or otherwise, in influencing the Impugned Decision, of the irrelevant consideration articulated in the Council's debate? This question was addressed in the Judgment

¹⁴¹ Transcript Day 1, p139. Counsel for Colbeam said "... the Court is entitled to draw an inference that they affected the decision-making process. And that, in my respectful submission, is the correct test" citing "Killegland and DAA in the round". However, in fairness to counsel, I should record that he went on to submit that, on the evidence, I was obliged to draw the inference that the members had taken irrelevancies into account.

¹⁴² Transcript Day 1 p59.

¹⁴³ Transcript Day 2 p189.

from §123 under the heading “Was Regard to Alleged Moral Obligation Material?”. I declined to draw the inference urged on me by Colbeam. That conclusion was not grounded in a presumption. Rather it was explicitly grounded “*on a conspectus of the admissible evidence and ... in all the relevant circumstances*” – in other words, explicitly on the basis of the process of inference earlier described.

60. On this issue the Judgment invokes the remark of Pickford LJ in dismissing the appeal from the Kings Bench in **London & Provincial Electric Theatres**.¹⁴⁴ Counsel for Colbeam in the present certificate application characterises the remark of Pickford LJ as obiter,¹⁴⁵ as the considerations at issue in that case were held not to have been irrelevant. Indeed, I observe that, even if ratio, the remark of Pickford LJ does not bind me. That said, it is undoubtedly persuasive. It has been authoritatively described as “well-known”¹⁴⁶ and is recently cited by **Fordham**¹⁴⁷ as to “*context/practical reality*” as applicable to deliberative decisions. I have recited it above, but it bears repeating:

“... probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think that there are probably few debates in which someone does not suggest as a ground for decision something which is not a proper ground; and to say that, because somebody in debate has put forward an improper ground, the decision ought to be set aside as being founded on that particular ground is wrong.”

Indeed, in that case, Buckley LJ had also said:

“I do not pay much attention to the views expressed by six members out of the whole Council. We have to see what was the ground on which the Council acted, and whether that ground was open to them.”

Though the Court of Appeal dismissed the appeal, I do not think that citation by counsel for Colbeam of Lord Reading CJ in the Kings Bench, to the effect that the council would have erred had they allowed extraneous considerations to affect their decisions or influence their minds, really advances his case – it is no more than an orthodox and general expression of the law and does not bear on the issue of materiality of effect or influence.

P3 - COLBEAM SUBMISSIONS

61. I have, just above, addressed certain of Colbeam’s submissions as regards the remark of Pickford LJ in **London & Provincial Electric Theatres**. Colbeam further submits as follows:

¹⁴⁴ R (London & Provincial Electric Theatres) v London County Council [1915] 2 KB 466.

¹⁴⁵ Transcript 16 February 2026 14:27.

¹⁴⁶ Bishop’s Stortford Civic Federation v East Hertfordshire District Council [2014] EWHC 348.

¹⁴⁷ Judicial Review Handbook, 7th Ed, 2020 p56. Pickford LJ was cited also and with approval in R v Exeter City Council ex. p J L Thomas [1991] 1 QB 471, in Scottish Widows plc v Cherwell DC [2013] EWHC 3968 (Admin), [20]. See also Trail Riders Fellowship v Lincolnshire County Council [2026] EWHC 88 (Admin).

- a. As the Judgment accepts, the presumption of validity of an administrative decision (**Abenglen**¹⁴⁸) cannot displace a proper evidential inference. So an issue of transcendent importance arises: does the presumption of validity dictate which inference a court might draw once it has been established that the decision-maker took into account an irrelevant factor?
- b. The consideration of what inferences to draw proceeds from two premises: first, that the impugned decision is presumed valid; and second, that the elected members had regard to at least one irrelevant consideration put forward by the proposer of the motions, which the Judgment acknowledged are in general “*likely to be thought influential*”.¹⁴⁹ Once regard is had to an irrelevant consideration, the question of its influence is a matter of factual inference to be determined on the balance of probabilities using ordinary evidential reasoning, unfettered by any presumption.
- c. Colbeam accepts that it bears the onus of proof that the elected members considered irrelevant factors. This can be proved directly, or by inference from proven facts. Colbeam satisfied the Court that at least one irrelevant factor was considered by the elected members. In that context, the question for the court is whether the irrelevant consideration was material in the sense that it influenced the decision.
- d. An inference is a conclusion that a court may properly draw from the evidence. It is a matter for the court to decide, in any given case, what inference (if any) it should draw from established facts. However, the presumption of validity does not impinge on this fact-finding process as, for example, it did not impinge in **Flanagan** or **Griffin**. It is not necessary or appropriate to identify a hierarchy of evidential inferences when determining a challenge to such a decision.
- e. This is a legally significant point with important practical ramifications - on which there is no appellate authority. It would benefit from appellate consideration.

P3 - DLRCC SUBMISSIONS

62. DLRCC submits that

- a. The Judgment’s reasoning and logic is sound. It is well settled that the question must accurately reflect the judgment and must not be an addition, exaggeration or distortion launched to create a case for appeal (MRRRA). Point 3 does not fully capture what the Judgment held at §99.
- b. The Judgment accepted “*that the presumption of validity cannot displace a proper evidential inference*”. The Judgment does not find that a Court must always prefer evidential inferences favourable to the validity of an impugned decision. Rather, it recognised that not infrequently “*multiple views or inferences are reasonably possible*” and only in those circumstances “*the*

¹⁴⁸ State (Abenglen Properties Ltd) v Dublin Corporation [1984] 1 IR 381.

¹⁴⁹ Proposition (v), p.75.

presumption of validity may well require preference of the view which validates a decision over that which would invalidate it”.

c. Ultimately, the view expressed in the Judgment is that:

“The obligation is to form an overall view, on a conspectus of the evidence and in light of all relevant circumstances, whether the inference should be drawn. Or, to put it another way and more simply: the obligation is to ask on that conspectus and, in that light, what were the reasons for the decision? You stand back, look at the decision as a whole, read it as valid if reasonably possible and ask yourself what does it mean?”¹⁵⁰

63. DLRCC cites

- **Massey:**¹⁵¹

*“The application for leave to appeal should **engage with the rationale of the judgment being appealed against and provide a plausible basis as to why that judgment is wrong** to the level that meets the criteria for an appeal. While a leave to appeal application is in one sense premised on the view that the decision may be incorrect, that does not relieve a would-be appellant from actually engaging with the logic and reasoning of the judgment as opposed to merely repeating his or her position” (bold in source text)*

- **Maguire & Phoenix Rock:**¹⁵² *“the mere fact that an applicant for leave disagrees with a conclusion in the judgment cannot be relied upon to characterise the state of the law as being uncertain”.*
- **MRRA:**¹⁵³ *“‘Uncertainty’ cannot be ‘imputed’ to the law by an applicant simply by raising a question as to the point of law. Merely raising an argument on the proposed point of law which the Court has rejected does not mean that the law is uncertain.”*

64. DLRCC

- notes that Colbeam cites no authority and submits there is no appellate authority on the point.¹⁵⁴
- observes that *“the law may be clear even though there is no decided authority on the point”*.¹⁵⁵
- submits that Point 3 fails the requirement that the law be uncertain.¹⁵⁶
- submits that from a practical perspective, Colbeam does not identify where in the Judgment the presumption of validity was invoked to prefer one *“reasonably possible”* inference over another and, more importantly, how the result of the Judgment could be different if that inference had not been preferred over the other. So Point 3 fails the requirement that it be determinative.¹⁵⁷

¹⁵⁰ §98, p.75, ‘Proposition’ vi.

¹⁵¹ §6(iii)(c).

¹⁵² Maguire & Ors -v- An Bord Pleanála & Ors; Phoenix Rock Enterprises Limited T/A Frank Pratt & Sons Limited v An Bord Pleanála & Ors [2023] IEHC 209 at §27.

¹⁵³ §8(o).

¹⁵⁴ §42 of Colbeam’s submission.

¹⁵⁵ Callaghan v An Bord Pleanála & Ors [2015] IEHC 493 §14.

¹⁵⁶ MRRA §8(n).

¹⁵⁷ MRRA§8(e).

P3 – DISCUSSION & DECISION

65. I agree with DLRCC’s submission that Colbeam does not identify where in the Judgment the presumption of validity was invoked to prefer one “*reasonably possible*” inference over another and how the result of the Judgment could be different if that inference had not been preferred over the other. So Point 3 fails the requirement that it be determinative.¹⁵⁸

66. Point 3 seems to me to be an attempt to dress up as a point of law what is in fact no more than Colbeam’s disagreement with an inference of fact. The Judgment, properly read, does not deploy the presumption of validity in drawing any inference. Accordingly the point does not arise from the Judgment, correctly understood and read as a whole. Rather, Point 3 plucks the impugned content from its context in the Judgment as a whole.

67. That apart, the presumption of validity is an articulation of the imposition on an applicant for judicial review of the onus of proof. That the applicant bears that onus is trite law. And, where multiple inferences from primary facts are possible, the applicant bears the onus of proof that the inference for which it contends should be drawn. That too is trite law. That inferences are drawn from a conspectus of the evidence, the circumstances and the context is also trite law. There is no uncertainty in the law here. If there is any point of law in Point 3, it is not one which successfully negotiates the very high hurdle of exceptional public importance.

68. I should add that in reply¹⁵⁹ counsel for Colbeam for the first time essayed a critique for purposes of Point 3 of the following passage in the Judgment:

"It also seems to me that, perhaps paradoxically, the assumption, which no doubt is as justified in fact as it is in law necessary, that the vast majority of elected members take their duties seriously, perform them conscientiously and try to do so in accordance with law and on relevant considerations only, may on particular facts justify a view that the more egregious the irrelevant utterance of an errant councillor, the less likely it was material in the decision. In short, sensible councillors will ignore the obviously irrelevant".

69. The critique was that this “means that the more outrageous the statement by the proposer of the motion, the more readily, invoking the presumption,¹⁶⁰ it will be disregarded. Respectfully that makes it impossible to challenge an administrative decision if that is how the presumption is to be applied.”¹⁶¹ I in turn replied that “it all depends on the evidence”. Leaving aside its belated introduction, the critique of the passage in question simply fails to engage with its explicit acknowledgement of the possibility of paradox and

¹⁵⁸ MRRA\$8(e).

¹⁵⁹ Transcript 16 February 2026 16:22.

¹⁶⁰ i.e. the presumption of validity.

¹⁶¹ Transcript 16 February 2026 16:25.

that the reasoning it proposes might arise “on particular facts”. So, the assertion of impossibility of challenge is based on a misconstruction of the Judgment and a point thus based is not certifiable for appeal.

POINTS 4 & 5 - RELEVANCE OF POLITICAL CONSIDERATIONS & PROPRIETY OF INHIBITION OF PERMISSIONS IN MATERIAL CONTRAVENTION

70. The posited Question 4 is

Whether when, in making a development plan, the elected members of a planning authority take into account political rather than planning considerations, they take into account irrelevant considerations.¹⁶²

71. The posited Question 5 is

Whether, when in making a development plan a decision is taken by the elected members for the purpose of preventing An Coimisiún Pleanála from exercising a power under statute to grant planning permission in material contravention of a development plan, it is taken for an improper purpose or is based on an irrelevant consideration.¹⁶³

P4 & 5 - COLBEAM SUBMISSIONS

72. Colbeam submits that

- a. Points 4 and 5 raise a question of exceptional public importance as to the approach elected members must take and the factors to which they can have regard when making a development plan: when does the use of land-use zoning powers to fetter the powers of another statutory body cross the line from legitimate decision-making to become an irrelevant consideration or an improper purpose? The nub of Points 4 and 5 is a principled distinction between adopting zoning policies to reflect a planning philosophy, and using those policies tactically, to preclude another decision-maker (the Commission) from exercising its powers on a specific site, because of a view that the governing legislation is dysfunctional.
- b. The making of a development plan is a function reserved to the elected members. This is a political process in a deliberative assembly. The elected members may be lobbied by stakeholders and are subject to political discipline in voting as to a plan. The process is, however, a statutory process constrained by s.12(11) PDA 2000 as to the matters the elected members may properly consider.

¹⁶² Judgment §112(f), p.82.

¹⁶³ Judgment §112.

- c. The elected members may legitimately have regard to proper planning and sustainable development and to *“any relevant policies or objectives ... of the Government or any Minister of the Government”*. But they may not seek actively to circumvent those policies or statutory schemes. Such political views trespass beyond the boundaries of an appraisal of what constitutes proper planning and sustainable development, in accordance with Government policy.
- d. The interplay between and the balance to be struck between the statutory powers of decision-making bodies, and the boundaries of these roles and responsibilities, are important. Whilst the 2016 Act¹⁶⁴ has lapsed, the allocation and separation of the powers conferred by the Oireachtas on statutory bodies in the planning context is a matter of wider importance.
- e. Moreover, the extent to which political considerations can fall within the ambit of proper planning and sustainable development is an issue which would benefit from consideration by an appellate court. Curial deference to zoning decisions cannot apply if the elected members exceed their lawful powers or exercise those powers for an unlawful purpose. The distinction (if any) between factors which may be considered to be political, in this context, and issues of proper planning and sustainable development in accordance with the statutory scheme is an issue of public importance, which would benefit from appellate clarification.
- f. In oral argument Colbeam briefly cited **ILEA**¹⁶⁵ by analogy as an *“interesting fact pattern”*¹⁶⁶ illuminating the alleged inappropriateness of the Council’s seeking in the present case to avoid having their view countermanded by the Board. As it was not overly pressed, I think I may say simply that I do not find the analogy persuasive as the respective cases seem to me to relate to very different circumstances.

P4 & 5 DLRCC SUBMISSIONS

73. DLRCC submit that

- a. Points 4 and 5 are based on Colbeam’s characterisation as irrelevant certain of the members’ remarks (of Cllr Saul and to a lesser extent Cllr O’Leary) - which characterisation the Judgment rejected.¹⁶⁷ On the facts of this case the Elected Members exercised their functions for a *“legitimate”* and a proper planning purpose: to maintain open space. The Court concluded:¹⁶⁸

“It appears to me, for these reasons, that regard by Cllr Saul to the potential for the Council, by an otherwise legitimate use of zoning of the Colbeam Lands for particular use of open space, to address what he considered to be the differing views of the Council and the Commission as to material contravention of the 2016 Development Plan, did not constitute regard to an irrelevant consideration. It merely contemplated the exercise of the Council’s proper powers in advancing its view of the

¹⁶⁴ Planning and Development (Housing) and Residential Tenancies Act 2016.

¹⁶⁵ R (Westminster City Council) v Inner London Education Authority, [1986] 1 All ER 19, [1986] 1 WLR 28.

¹⁶⁶ Transcript 16 February 2026 15:04.

¹⁶⁷ §112.

¹⁶⁸ §113.

importance of and the substance of the proper planning and sustainable development of the Colbeam Lands – that is to say, as open space.”

- b. The Judgment confirms that “[a]t base, the members’ motive and purpose was the substantively legitimate planning purpose of preserving the Colbeam Lands as open space” and that “[z]oning was the means of doing so in the face of a perception (correct or not) that the Commission would otherwise frustrate that purpose.”¹⁶⁹ The latter simply reflects a “decision of elected members of local government as to how best to use the levers provided to them by statute to best advance in their development plan what they consider to be, in their evaluative judgement, the proper planning and sustainable development of their functional area.”¹⁷⁰ and “that they pursued their view of the proper planning and sustainable development of their functional area by availing of the zoning powers granted them by statute and of the deference to the exercise of those powers made explicit in the 2016 Act.”¹⁷¹
- c. In this regard, the Judgment confirms:

“Put simply, if in their discretion as the primary arbiters of what, as a matter of the policy to be laid down in their development plan, constitutes proper planning and sustainable development, the members consider that particular lands should be zoned for a particular use type, it is to be presumed that such zoning reflects the members’ appreciation of:

- *The legal and practical significance of such zoning, including the extent to which it may limit or impose conditions on the power to grant permissions in material contravention of such zoning.*
- *Their views of the importance of applying that legal and practical significance to the lands in question and as to such use.*

The Council’s submissions put it simply and correctly: the effect of the zoning the lands ‘F’ and ‘INST’ on planning decisions, including decisions of the Commission, was a relevant consideration for the members. Indeed, it would be a cause for criticism if, in some unreal world, members were required to make zoning decisions ignorant of their legal and practical significance.”¹⁷²

- d. The Judgment’s reasoning and logic is sound, and the Applicant has not provided any basis upon which it is wrong (**Massey**¹⁷³), much less a conflicting authority. And “the mere fact that an applicant for leave disagrees with a conclusion in the judgment cannot be relied upon to characterise the state of the law as being uncertain” (**Maguire & Phoenix Rock**¹⁷⁴); “‘Uncertainty’ cannot be ‘imputed’ to the law by an applicant simply by raising a question as to the point of law. Merely raising an argument on the proposed point of law which the Court has rejected does not mean that the law is uncertain.” (**MRRA**¹⁷⁵); and “the law may be clear even though there is no decided authority on the point” (**Callaghan**¹⁷⁶).

¹⁶⁹ §115.

¹⁷⁰ §112(g).

¹⁷¹ §112(i).

¹⁷² §118.

¹⁷³ §6(iii)(c).

¹⁷⁴ §27.

¹⁷⁵ §8(o).

¹⁷⁶ §14.

- e. Accordingly, Colbeam's point falls foul of the principle that "[t]he law in question must be in a state of uncertainty, evolution or lack of clarity" (§8(n) of **MRRA**).

P4 & 5 DISCUSSION & DECISION

74. Point 4 sets up a plainly false dichotomy between political and planning considerations. The similarity of the words "politics" and "policy" is no coincidence – either linguistically or substantively. It is indisputable that the making of a development plan is an exercise in making local planning policy by a constitutionally recognised political organ of state. S.10(1A) PDA 2000 describes it as a policy document: "*A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan*". It is its political nature by reason of its electoral mandate which gives the Council representative democratic validity as a maker of policy and, specifically as a maker of a development plan. Though the process is constrained by law, the making of a development plan is a political act. That is the very reason why it is a function reserved by law to the elected members of the Council. I see no uncertainty of law in any of these propositions.

75. The true underlying proposition of Point 4 could not be expressed by Colbeam in Point 4 as to do so demonstrates the absence of uncertainty in the law. So expressed, it would ask whether, in making a development plan, the elected members may take into account non-planning considerations. Even if I erred as alleged (which I assume for argument's sake) there is no uncertainty in the law in that regard: as then applicable s.12(11) PDA 2000 provided in clear terms: "*In making the development plan ... the members shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.*"

76. Point 4 cites specifically §112(f) of the Judgment – again plucking content from context within which the Judgment must be understood as a whole. While not the entirety of the relevant context, §112(a)-(m) provides ample confirmation that the Judgment considered the considerations which affected the impugned course taken by the elected members to have been planning considerations. Point 4 misreads the Judgment. That apart and even were I wrong, I cannot see that my error raises a point of law of exceptional public importance.

77. Point 4 also fails requirement of precision and so invites an essay, a discursive, roving, response from the Court of Appeal rather than a decision determinative of the case.

78. In truth, Point 4 is really no more than throat-clearing for Point 5. Its certification can be refused without real damage to the case Colbeam in substance intends for appeal.

79. However, one difficulty which prevents certification of Point 5 is that the impugned approach of the elected members in, by adopting specifically a zoning objective as to the Colbeam lands, seeking to prevent the Commission from granting planning permission thereon, was taken in a specific and superseded statutory context. That specific context was peculiar to the 2016 Act. It was one in which the 2016 Act,¹⁷⁷ as to SHDs¹⁷⁸, prohibited the Commission from granting planning permission in material contravention of, specifically, zoning objectives of development plans.¹⁷⁹ With the demise of strategic housing developments that prohibition and the lever the councillors sought to wield no longer subsist. Pursuant to the PDA 2000¹⁸⁰ and the PDA 2024¹⁸¹ the Commission has and will have power - constrained but nonetheless wide - to grant planning permission in material contravention of development plans.

80. The 2016 Act and its SHD planning permission process were replaced and lapsed over time following the enactment of the LRD Act 2021¹⁸² in December 2021. In this respect, an observation in the Judgment which explicitly did not inform its decision is now relevant to the present question of certification for appeal. As to the view taken in the Judgment that members were entitled to take into consideration that by rezoning the land there would be less scope for the Commission to permit development inconsistent with the protection afforded to open space by the 'INST' designation, the Judgment observed:

"While it is not part of my reasoning and does not inform my decision, I would add by way of comment that, if I am wrong in this respect and as the 2016 Act and its prohibition of material contravention of zoning objectives are fast withering on the vine, I am likely wrong as to a very small number of instances (if any other than the present) in which the coincidence arises that an SHD planning permission decision remains to be made as to a site rezoned allegedly to hamstring the Commission in making that specific decision."

81. I assume for argument's sake that, contrary to the view taken in the Judgment, it was unlawful of the elected members to seek to advance, in light of the prohibition imposed by s.9(6) of the 2016 Act, their view of the proper planning and sustainable development of the Colbeam lands by zoning them for open space. It will be apparent from the foregoing that, as the SHD process withers on the vine, the prospect of any like stratagem by elected members in adopting development plans is remote. Accordingly, it cannot be said that my error, if it was such, transcends well, if indeed at all, beyond the individual facts and the parties in the case. In short, elected members will not again see the same advantage in zoning lands. Resolution of Point 5 at the appropriate level of specificity – as it relates to an attempt by the elected members to leverage s.9(6) of the 2016 Act to effect their view of the proper planning policy for the Colbeam Lands – is unlikely to resolve other cases. As was said of a point proposed for certification in **Friends of Killymooney Lough**¹⁸³ *'The*

¹⁷⁷ Planning and Development (Housing) and Residential Tenancies Act 2016.

¹⁷⁸ Strategic Housing Developments.

¹⁷⁹ S.9(6) of the 2016 Act provided as follows:

"(a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.

(b) The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land."

¹⁸⁰ S.37.

¹⁸¹ S.110 – not yet commenced at 17 July 2026.

¹⁸² Planning and Development (Large Scale Residential Developments) Act 2021.

¹⁸³ *Friends of Killymooney Lough v An Coimisiún Pleanála #2* [2025] IEHC 576, [2025] 10 JIC 2107.

alleged practical ramifications are typically hypothetical or speculative and/or the proceedings are not a suitable vehicle to explore them.' Even taking Point 5 at a higher level of generality, the factual and legal matrix in which it would be considered on appeal in this case would be very particular and very unlikely of repetition such that it would provide authority applicable to other such matrices at most by analogy - and likely weak analogy. An analogous issue arose in **Stapleton**¹⁸⁴ - in which the demise of the SHD process informed conclusions that the point of law in question was not of exceptional public importance nor was it desirable in the public interest that an appeal should be taken. I take the same view here.

82. For these reasons, I refuse to certify Points 4 and 5 for appeal.

CONCLUSION

83. For the reasons I have given, I refuse to certify an appeal in this case. The case will be for mention on 12 October 2026.



23/9/26

184 Stapleton v An Bord Pleanála & Ors [2025] IEHC 178 §36 et seq.