



[2026] IEHC 679

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2025.0001076]

IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT 2000
BETWEEN

LITTLE ISLAND COMMUNITY ASSOCIATION CLG

APPLICANT

AND
AN COIMISIÚN PLEANÁLA

RESPONDENT

AND
COUNTRY CLEAN RECYCLING UNLIMITED COMPANY

AND
RUDEN HOMES LIMITED, CORK COUNTY COUNCIL, JOHN DEANE, AND JOHN RUANE (BY
ORDER)

NOTICE PARTIES

<i>Date of impugned decision:</i>	<i>20 May 2025</i>
<i>Date proceedings commenced:</i>	<i>14 July 2025</i>
<i>Date of main hearing:</i>	<i>25 June 2026 & 29 September 2026</i>
<i>Date draft judgment circulated:</i>	<i>9 October 2026</i>

JUDGMENT of Humphreys J. delivered on Friday 16 October 2026

1. While there have been no previous proceedings between the primary parties to this case, the prior decision of the commission (ABP-306845-20) relating to a refusal of planning permission for the same development was the subject of challenge by the first named notice party in proceedings entitled *Country Clean Recycling Unlimited Company v. An Bord Pleanála* (High Court record number 2023/1124 JR). The commission conceded the proceedings and consented to an order of *certiorari*.

Geographical context

2. The project (<https://www.pleanala.ie/en-ie/case/320580>) is a waste transfer and recycling facility. The proposed development also includes the construction of a separate two storey administration block (178 m²), ESB sub-station (36 m²), three weighbridges, two access ramps, new exit gate and signage to eastern site boundary, new boundary treatments, supplementary planting inside western site boundary, underground firewater containment tank, underground diesel storage tank, service yard, 23 car parking spaces, new drainage works including three oil interceptors and four silt traps along with all associated site works all on a site measuring 1.49 hectares, all at Courtstown Industrial Estate, Courtstown, Little Island, Co. Cork. It is located at or near the following: https://www.google.com/maps/@51.8969011,-8.3359322,2241m/data=!3m1!1e3?entry=ttu&q_ep=EgoyMDI2MDYyMi4wIKXMDSOASAFQAw%3D%3D. A link to a 2011 Google StreetView location of the entrance to the site is at <https://maps.app.goo.gl/piwjdWUVEE7wtcVd9>. The 2011 Streetview image does not represent the current view in this location because the lower half of the parcel of land zoned LI-I-02 has been developed since the planning application was made by the construction of industrial buildings for EZ Living.

3. It can also be noted at this point that many of the developer's maps in the planning application do not follow the Ordnance Survey mapping convention where north is at the top of the page.

Parties

4. The statement of case records:
"Applicant – Community association and environmental NGO
Respondent – An Coimisiún Pleanála (the 'Commission'), decision taker
First Notice Party - Country Clean Recycling Unlimited Company ('First Notice Party') – Waste management company and planning applicant
Second, Fourth and Fifth Notice Party - Ruden Homes Limited, John Deane, and John Ruane ('Ruden Homes') – The Fourth and Fifth Notice Parties own lands which form part of a Special Policy Area to which Objective LI-X-01 of the Cork County Development Plan 2022-2028 relates. The Second Notice Party was granted planning permission for a Large-Scale Residential Development on part of the lands owned by the Fourth and Fifth Notice Party, who are also directors of the Second Notice Party.

Third Notice Party – Cork County Council (the ‘Council’) – Planning Authority for functional area and initial decision taker.”

Facts

2007 onwards – previous permission, not acted on

5. A previous planning permission for a much smaller waste facility (for 20,000 tonnes *per annum* of dry recyclable non-food waste) had been granted to Healy Blue Bins in 2007 (and extended in 2012). That permission expired on 10 January 2018 without having been constructed.

2018-2021 – application for present permission and refusal

6. The waste management company Country Clean acquired an interest in the site, and, on or about 6 December 2018, applied to the council for a new planning permission for the larger waste facility that is the subject of these proceedings, which is proposed to accept 95,000 tonnes *per annum* of wet and dry waste including food wastes from household and commercial waste customers.

7. Following a request for further information, on or about 13 February 2019, the council decided to grant planning permission (PA reference 18/7200).

8. On or about 10 March 2020, appeals were made to the commission, including one by the applicant in these proceedings and one by the first-named notice party.

9. The commission appointed an inspector. On or about 10 September 2020, the inspector visited the site. On 29 September 2020, she made her first report to the commission recommending approval.

10. The commission met on 3 March 2021 to consider the file and the report of its inspector. The commission direction records its decision to refuse planning permission by a margin of 2:1.

11. On 28 April 2021, by order, the decision was made to refuse planning permission.

2022 – new CDP

12. On 25 April 2022, the elected members of the council adopted the Cork County Development Plan 2022-2028 (the new CDP) and it came into effect on 6 June 2022.

13. Zonings of land to the north and west of the subject lands changed in the new CDP. The lands to the north are now zoned as a Special Policy Area LI-X-01 with an objective to provide “Medium A density residential development, small scale, local neighbourhood centre, high quality public open space (including buffer between development and adjoining industrial use) and public realm”. The lands to the west are now zoned “reserved residential” under objective LI-RR-01, which reserves such lands for the development in the next development plan. The subject lands remained zoned as “industry” *per* objective LI-I-02, however the wording of this zoning was amended under the new CDP.

2023 – first judicial review

14. On or about 5 October 2023, the first-named notice party brought judicial review proceedings to challenge the decision made on 28 April 2021.

15. This was accompanied by a request for extension of time, which was related to an alleged undeclared conflict of interest by Mr Paul Hyde, the deputy chairperson of the board at the time of the decision, and related to a time of considerable turbulence in the operation of the board.

2024 – LRD application to the north

16. On or about 15 July 2024, a large-scale residential development (LRD) application was made to the council by Ruden Homes Ltd to construct 172 residential units on the northwest portion of the newly zoned Special Policy Area lands to the north (bearing PA reference 24/5328).

2024-2025 – LRD granted - remittal of this application – grant of permission

17. On 26 July 2024, the decision of the commission of 28 April 2021 (reference ABP-306845-20) to refuse planning permission for the waste facility was quashed on consent by the High Court.

18. The commission set up a new file (bearing reference ABP-320580-24) and invited updated submissions from the appellants, including the applicant in these proceedings pursuant to s. 131 of the Planning and Development Act 2000 (the 2000 Act). Submissions were sought, *inter alia*, having regard to the coming into effect of the new CDP.

19. On 8 November 2024, the council commented, *inter alia*:

“[New residential zoned land] now adjoins the site, whereas an industrial zoning buffered the subject site from the residential lands under the previous Plan. The adjoining land to the n-west is subject to a Special Policy Objective (X-01) for Medium A density residential development here (in addition to a small-scale local neighbourhood centre). This represents a higher density than envisaged under the previous Plan. Lands adjoining the site to the west are part of a Residential Reserve (RR-01) for Medium A density residential development combined with business development. With regard to the Transitional zoning objective (Objective ZU 18-5), consideration will need to be given to impacts on these neighbouring lands arising from emissions associated with the development, together with the appropriate mitigation. In addition, the original application and EIAR dates from 2018 (as updated in the response to a request for further information). Since then, further developments have been granted/applied for in Little Island and any cumulative assessment may need updating.

An application for 172 residential units with a creche and commercial units is pending on lands to the n-west within the X-0 1 Special Policy Area under reference 24/5328 (Further Information requested on Sept 9th 2024 - Reply awaited)."

20. On or about 20 November 2024, the applicant made an updated submission to the commission. The first-named notice party and planning authority also made submissions.

21. There was no oral hearing.

22. On or about 4 December 2024, planning permission was granted to Ruden Homes Ltd for an amended development on the northwest portion of the Special Policy Area LI-X-01 lands, subject to conditions. This did not relate to a part of the residential lands bordering the development site here. Ruden Homes appealed a condition to the commission LH 04 321632 (<https://www.pleanala.ie/en-ie/case/321632>). The master plan submitted with that application did not involve a buffer zone to the south and did not involve much of a buffer zone to the east. Indeed, the council specifically reserved its position on this with condition 91:

"This decision does not include, authorise or agree to the illustrated linear buffer zone along the eastern lands, boundary abutting the industrial / business lands. The form, nature and extent of the buffer shall be determined by way of future planning application.

Reason. To accord with the special policy area of objective LI - X -01"

2025 - Decision on present application

23. The commission appointed the original inspector to prepare an updated inspector's report.

24. On 4 April 2025, the inspector revisited the site.

25. The additional inspector's report (<https://www.pleanala.ie/anbordpleanala/media/abp/cases/reports/320/r320580a.pdf>) is dated 14 April 2025, recommending that permission be granted subject to conditions.

26. On or about 12 May 2025, the commission met to consider the file and decided to grant planning permission generally in accordance with the inspector's recommendation for the reasons and considerations documented in its direction dated 14 May 2025.

27. The decision was formalised by order dated 20 May 2025.

Procedural history

28. The proceedings were issued on 14 July 2025.

29. On 21 July 2025, leave was granted by Farrell J. with liberty to amend the statement of grounds.

30. The amended statement of grounds was filed and served on 22 July 2025.

31. On 15 December 2025, a hearing date of 25 June 2026 was fixed.

32. On 12 February 2026, I granted an order to amend a non-material numbering error in the statement of grounds.

33. The further amended statement of grounds (FASOG) was filed and served on 19 February 2026.

34. The commission filed its opposition papers on 12 May 2026.

35. The first-named notice party filed its opposition papers on 21 May 2026.

36. The matter was listed for callover on 8 June 2026.

37. The applicant served its written submissions on 16 June 2026.

38. On 19 June 2026, the applicant filed a further affidavit without leave of the court.

39. The commission served its written submissions on 23 June 2026.

40. On 24 June 2026, the commission filed an affidavit to correct exhibits with leave of the court.

41. The first-named notice party served its written submissions on 24 June 2026.

42. The matter was heard on 25 June 2026. The applicant completed its submissions and the replying submissions were left over. At the hearing, consideration was given to whether Ruden Homes Ltd and the council should be added as notice parties and heard on the issue of the interpretation of the development plan. What was decided was that those parties would be joined as notice parties and given the opportunity to participate if they wished. On that basis, the substantive hearing was part heard and adjourned.

43. The matter was listed for case management on 6 July 2026 and the second to fifth notice parties were joined to the proceedings by order dated 6 July 2026 and perfected on 8 July 2026.

44. An appearance was entered on behalf of the council on 8 July 2026.

45. An appearance was entered on behalf of Ruden Homes on 10 July 2026.

46. On 22 July 2026, Ruden Homes filed an affidavit and submissions.

47. On 14 August 2026, the council filed an affidavit.

48. On 4 September 2026, the first notice party entered an appearance.

49. The hearing resumed and concluded on 29 September 2026.

50. Judgment was reserved at the end of that hearing. I would like to record my thanks to all of the lawyers involved for their unfailingly courteous, professional and helpful assistance. As I have previously sought to make clear, insofar as any points advanced are not being accepted in this or any other given judgment, that is solely to do with the inherent merits of such points and is not

reflection on those instructed to convey such points, a distinction that most certainly should be, and I believe generally is in fact, self-evident to all concerned.

51. On 9 October 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 15, 195 to 198 and 204 of Practice Direction HC 137 issued by the President of the High Court, to give an opportunity to address matters such as errors/ ambiguities on the basis set out below.

52. Parties are required to:

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

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

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

- (i) advising the court in the event that, in the light of the draft judgment, the party concerned is not pursuing any one or more (or all) points of claim or opposition, as the case may be, so that such points do not therefore need to be decided by the court;
- (ii) advising the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment;
- (iii) advising the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any apparent typographical, factual, legal or other errors in the draft;
 - (b) any apparent ambiguity or other matter in the draft that could unnecessarily multiply issues or complicate the further processing of the matter;
 - (c) any redaction of personal or other information that a party wishes to request;

- (d) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any submission as to why such reference is not relevant or otherwise should not be included or as to why such matter if included should not lead to the proposed conclusion;
 - (e) any other matter in the draft judgment that the party considers should be omitted;
 - (f) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view); and
 - (g) any other proposals as to the wording (as opposed to substance) of the decision if the proposed wording causes any issue for a party for any identified reason; and
- (iv) assisting the court by providing views on such matters if any on which views are specifically invited in the draft judgment.

55. In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.

56. The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.

57. The deadline for such comments from the parties was to be 11:00 on Wednesday 14 October 2026. Responses were as follows:

- (i) Applicant: no comments.
- (ii) Commission: helpfully identified typos.
- (iii) Country Clean: no response.
- (iv) Ruden Homes: helpfully identified typos.
- (v) Council: no comments.

Preliminary issues

58. The commission made the following objection in submissions:

"4. The Applicant delivered a further, late, unsworn affidavit of Brian Harrington outside of the agreed directions and without leave of the Court on 17 June 2026 (the 'Harrington Affidavit'). Whilst the Harrington affidavit purports (§1) to correct an error in the exhibits, it exhibits additional documentation over and above simply replacing the site notice referred to. The issue of the duration of the Healy Blue Bins grant of planning permission does not relate to any pleaded ground of challenge and is, therefore, not relevant to the issues for determination by the Court. The Commission reserves its position on the Harrington affidavit, including to make further submissions objecting to the admissibility of same at the hearing of this Judicial Review, if necessary."

59. While nothing much turns on this, insofar as this must be read as a claim of irrelevance, I would generally accept that. Irrelevant evidence is inadmissible on that ground albeit that the commission did not primarily phrase it that way. In any event, since the affidavit was delivered without leave of the court, it is impermissible in commercial case-managed proceedings.

60. The Ruden Homes notice parties did object to an email of Friday 25 September 2026 from Country Clean at 16:21 pm, purporting to serve an unfilled copy of the affidavit of Pat Feehely.

61. Unfortunately such an affidavit is not permissible on the grounds of (a) not being provided for in directions – in commercial case-managed proceedings, evidence appearing without leave or directions causes procedural confusion and disruption to the schedule for delivery of papers – parties need to apply in that regard in advance as opposed to simply putting it in and asking forgiveness ; and (b) being too late (leaving only one clear working day before the hearing) to be permissible having regard to the rights of other parties to engage with such evidence. That isn't to suggest that two working days would have been acceptable – in principle, all replying evidence needs to be lodged before the time for written submissions begins.

Relief sought

62. The reliefs sought are as follows:

- "1. An Order of Certiorari by way of application for Judicial Review of a decision made by the Respondent ('An Coimisiún', formerly 'the Board') on or about 20 May 2025 to grant Planning Permission to the Notice Party ('the Developer') for a development of a waste transfer and recycling facility on a site of approximately 1.5 hectares at Courtstown Industrial Estate, Courtstown, Little Island, Co. Cork, (Coimisiún File 320580).
2. Such Declaration(s) of the legal rights and/or legal position of the applicant and/or respondents and/or persons similarly situated as the Court considers appropriate.
3. An Order providing for the costs of the application and an Order pursuant to Section 50B of the Planning and Development Act, 2000, as amended and/or Section 3 of the Environmental (Miscellaneous Provisions) Act 2011, as amended with respect of the costs of this application.
4. If necessary, a stay preventing the operation of the impugned decision until after the matters that are the subject of these proceedings have been decided by the courts.
5. Further and other orders including interim orders."

Grounds of challenge

- 63.** The core grounds of challenge are as follows:

"PART 1 - CORE GROUNDS

Domestic Law Ground

1. The impugned decision is invalid and made contrary to fair procedures and s.34(2) of the Planning and Development Act, 2000, as amended, because when making its decision An Coimisiún erred in its interpretation of, and failed to have regard to, properly or at all, Objectives LI-I-02 and or LI-X-01 and or ZU-18-5 and or BE-15-6 of the Cork County Development Plan 2022-2028 and or erred in failing to give reasons for its decision in light of these objectives and the associated provisions in paragraphs 2.6.49 to 2.6.52 of Volume 4 of the County Development Plan and paragraph 18.2.2 in Volume 1 of the Development Plan. Further particulars are set out in Part 2 below.

EU Law Grounds

2. The impugned decision is invalid because it contravenes Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') as transposed by Part XAB of the Planning and Development Act, 2000, as amended, and the case law of the CJEU:

o by failing to contain complete, precise, and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed development on the Cork Harbour SPA (Case C-236/01 Monsanto Agricoltura Italia and Others, paragraphs 106 and 113); and

o by failing to properly identify all the aspects of the project which can, either individually or in combination with other plans or projects, affect conservation objectives of the Cork Harbour SPA in the light of the best scientific knowledge in the field (Case C-127/02 Waddenvereniging and Vogelbeschermingsvereniging, paragraphs 52 – 61)

3. The impugned decision is invalid because An Coimisiún acted contrary to Article 6(2) and or 6(3) of the Habitats Directive as transposed by s.177S-V and Part XAB of the Planning and Development Act, 2000, as amended, and the case law of the CJEU, by failing to take the appropriate steps to avoid in the Cork Harbour SPA disturbance of the species for which the site has been designated, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive and the Board had an autonomous obligation in this regard. Further particulars are set out in Part 2 below.

4. The impugned decision is invalid and was made contrary to Article 2(1), Article 3 and Article 5 of the EIA Directive as transposed by Part X of the Planning and Development Act, 2000, as amended and the caselaw of the CJEU, because An Coimisiún failed to ensure that, before development consent was given, the proposed development was made subject to an Environmental Impact Assessment, properly or at all, and An Coimisiún erred in failing to properly conduct such an assessment in the manner required by Article 3 of the EIA Directive and failed to ensure that the Developer submitted an Environmental Impact Assessment Report ('EIAR') that was compliant with Article 5 and Annex IV of the Directive. Further particulars are set out in Part 2 below."

- 64.** Following a review of the opposition papers, the applicant has narrowed the scope of core grounds E2 and E4, meaning that pleas concerning impacts due to the design of the air emissions stack and the treatment of leachate from the waste processing activity by the Carrigrennan Cork City Waste Water Treatment Plant are no longer in the case.

- 65.** The pleas maintained by the applicant under core ground 2 are those at §§26-27 of the (FASOG). Under core ground 4, the applicant maintains the pleas at §§39-44 and §48 of the FASOG.

- 66.** At the hearing certain further grounds were not pursued:

- (i) Cg 1 – remains;

- (ii) Cg 2 – withdrawn in full;
- (iii) Cg 3 – remains; and
- (iv) Cg 4 – 31-38 withdrawn, 39-44 remain, 45-47 withdrawn, 48 remains.

67. Confoundingly, core ground 2 was dealt with in the updated statement of case despite having been dropped but the applicant confirms that this can be disregarded and is no longer part of the proceedings.

The impugned decision

68. The impugned decision provides as follows:

“Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) national policy and legislative provisions with regard to the sustainable management of waste for a Circular Economy,
- (b) the national Climate Action Plan 2024 and 2025,
- (c) the policies and objectives of the Regional Spatial and Economic Strategy for the Southern Region 2019-2031,
- (d) the policies of the planning authority as set out in the Cork County Development Plan 2022-2028,
- (e) the location of the proposed development, in an area which is zoned industrial and is designated as a Strategic Employment Location, and Objective ZU 18-16 which provides for waste transfer stations in industrial sites with warehousing and distribution, (D the LI-X-01 zoning objective for the adjoining lands requiring the provision of an appropriate landscape buffer between new residential development and adjoining industrial uses,
- (g) the characteristics of the site and of the general vicinity,
- (h) the distance to dwellings and sensitive receptors from the proposed development,
- (i) the Environmental Impact Assessment Report submitted,
- (j) the Natura Impact Statement submitted,
- (k) the submissions made in conjunction with the planning application, planning appeal and the responses to the Section 131 notices served on the 8th day of November 2024, and
- (l) the Inspector’s report, Addendum report and recommendation.

The Board was satisfied that the information before it was adequate to undertake an appropriate assessment and an environmental impact assessment in respect of the proposed development. The Board made its decision in a manner consistent with Section 15 of the Climate Action and Low Carbon Act 2015, as amended.

Appropriate Assessment: Stage 1

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature, scale and location of the proposed development, the Natura Impact Statement (including an Appropriate Assessment screening statement) submitted with the application, and submissions made in connection with the application and appeal including those made by the appellants and observers and in the Inspector's report and Addendum report. In completing the screening exercise, the Board accepted and adopted the Report and Addendum Report of the Inspector in respect of the identification of the European sites which could potentially be affected and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the sites' conservation objectives with the exception of Great Island Channel Special Area of Conservation (Site Code 001058) and Cork Harbour Special Protection Area (Site Code 004030) and that these were the only two sites requiring a Stage 2 Appropriate Assessment.

Appropriate Assessment Stage 2

The Board agreed with the screening assessment and conclusions carried out in the Inspector's report and Addendum report that Great Island Channel Special Area of Conservation (Site Code 001058) and Cork Harbour Special Protection Area (Site Code 004030) are the European sites for which there is potential for significant effects. The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for nearby European Sites in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the assessment, the Board considered, in particular, the:

- (i) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans and projects,
- (ii) mitigation measures which are included as part of the current proposal and
- (iii) conservation objectives for these European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report and Addendum report in respect of the potential effects of the proposed development on the aforementioned European sites. In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European sites in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development, taking into account:

- (a) the nature, scale and location of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions from the applicant, the planning authority, the observers and the prescribed bodies in the course of the application and appeal, and
- (d) the Inspector's report and Addendum report.

It is considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board completed an environmental impact assessment in relation to the proposed development and concluded that, by itself and in combination with other existing and proposed development in the vicinity, and, subject to the implementation of the mitigation measures proposed, the effects of the proposed development on the environment would be acceptable. In doing so, the Board adopted the report, Addendum report and conclusions of the Inspector.

Reasoned Conclusion of the Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The Board completed an Environmental Impact assessment in relation to the proposed development and concluded that, subject to the implementation of the proposed mitigation measures, as set out in the Environmental Impact Assessment Report 'Mitigation Measures' section of the various chapters and, subject to compliance with the conditions set out herein, the effects on the environment of the proposed development by itself and cumulatively with other development in the vicinity would be acceptable. In doing so, the Board adopted the report and conclusions of the reporting Inspector.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- (a) Emission of dust and odours from the development will be mitigated by the conducting of all waste handling activities within the building which will operate under negative pressure and will include the installation of an odour abatement system within the building;
- (b) Emission of noise that will be mitigated by the undertaking of activities within the buildings, by the significant separation between the site and the nearest noise sensitive locations, by the proposed hours of operation and by the attenuation resulting from the nature of the site boundaries and surrounding buildings;
- (c) Landscape and visual impacts in terms of the upper sections of buildings which may remain visible above screen planting which will be mitigated by the context of the industrial/business park environment, the distance from the development and the existing and proposed landscape screening; and
- (d) Traffic and transport impacts on peak hour congestion on the local road network which will be mitigated by the developer's scheduling and logistics arrangements and will be

avoided by the restriction on HGV traffic during the morning and evening peaks for the construction and operational phases of the development.

The Board is satisfied that the reasoned conclusion is up to date at the time of making the decision.

Conclusion on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development constitutes a sustainable development location on appropriately zoned lands for a waste processing and transfer facility that will serve the local needs of the area delivering upon the policy objectives set out in the Cork County Development Plan 2022-2028 including, amongst other things, to support circular and climate resilient principles by enabling increased rates of resource recovery and recycling thereby supporting the National Waste Management Plan for a Circular Economy 2024-2030 and Climate Action Plan. It is further considered that the development would not seriously injure the amenities of the area or the amenity of the local environment, would not be prejudicial to public health, would not result in adverse significant environmental impacts, and would be acceptable in respect of transport and road safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 5th day of November 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the Environmental Impact Assessment Report shall be implemented.

Reason: To protect the environment.

3. The mitigation measures contained in the Natura Impact Statement shall be implemented.

Reason: To protect European Sites.

4. The waste transfer and recycling facility shall be limited to the handling of 95,000 tonnes of waste or recyclable materials annually on this site, which shall not be exceeded unless authorised by a prior grant of permission. No waste shall be brought to this site other than those types indicated in the submissions by the applicant in connection with the planning application and appeal.

Reason: In the interest of the protection of the environment and the amenities of the area.

5. All segregation, handling and processing of waste material shall take place within the main building on the site. No waste shall be stored outdoors and there shall be no unloading or depositing of waste materials outside the building. Any organic material shall be transported to and from the site in sealed containers.

Reason: In the interest of amenity and of public health.

6. Waste shall only be received at the facility between the hours of 0600 and 2000, Monday to Saturday including on Bank Holidays, and not at all on Sundays. Waste shall only be dispatched between the hours of 0500 and 2000, Monday to Saturday and not at all on Sundays or Bank Holidays. Deviations from these times shall only be permitted in exceptional circumstances and where prior written agreement has been received from the planning authority.

Reason: In the interest of the protection of the environment and the amenities of the area.

7. Heavy Goods Vehicles shall not be permitted to access the development during the peak hours of 0730 to 0900 or to leave during the peak hours of 1600 to 1730. Staff starting and finishing times shall be such that access to the development by staff shall be outside of the hours 0800 to 0900 and 1630 to 1730.

Reason: In the interest of traffic management.

8. Prior to the opening of the development, a Mobility Management Plan shall be submitted to, and agreed in writing with, the planning authority.

This shall:

(a) fully detail internal vehicle movements, parking and delivery areas

and

(b) provide for incentives to encourage the use of public transport, cycling and walking by staff employed in the development.

Reason: In the interests of traffic management and encouraging the use of sustainable modes of transport.

9. Details of the materials, colours and textures of all the external finishes, signage, and external hard surfaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. (a) The signage scheme for the facility shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This shall arrive at an attractive, consistent and coherent signage scheme with appropriately dimensioned signs.

(b) With the exception of the signage scheme agreed under (a) above, no advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001 (as amended), or any statutory provision amending or replacing them, shall be displayed or erected on the building or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

11. The landscaping scheme shown on Drawing number 16498-2100, as submitted to the planning authority on the 5th day of November 2019, shall be carried out within the first planting season following the substantial completion of the external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of the protection of visual, residential and environmental amenities.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) the location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;

(b) the location of areas for construction site offices and staff facilities;

(c) details of site security fencing and hoardings;

(d) details of on-site car parking facilities for site workers during the course of construction;

(e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;

(f) measures to obviate queuing of construction traffic on the adjoining road network;

(g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

(i) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

(j) the containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

(k) the off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;

(l) the means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains; and

(m) a record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety and environmental protection.

13. Prior to commencement of development, a Construction Environmental Management Plan (CEMP) relating to noise and vibration shall be submitted to and agreed in writing with the planning authority. The CEMP shall include a site location map showing the nearest noise sensitive locations, give details of the predicted noise and vibration impact in addition to proposed mitigation measures. The CEMP and noise abatement measures shall comply with the recommendations of BS 5228, 'Code of Practice for Noise and Vibration Control on Construction and Open Sites'. The noise sensitive locations shall be taken to be the nearest residential buildings unless otherwise agreed in writing with the planning authority.

Reason: In order to protect the residential amenities of property in the vicinity.

14. Prior to the commencement of development on site, a detailed invasive species management plan shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of the proper planning and sustainable development of the area.

15. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

16. Hours of site development works shall be between the hours of 0700 and 1900 Monday to Friday, 0800 and 1400 hours on a Saturday and not at all on Sundays or Bank Holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

17. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority and the Department of Heritage, Regional, Rural and Gaeltacht Affairs in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) submit a copy of the geophysical survey report to the Department of Heritage, Regional, Rural and Gaeltacht Affairs,

(c) agree in writing details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission."

Some general considerations

69. The way the system is supposed to work is that when questions of principle are decided by appellate courts, the answers are applied in practice to the facts of individual cases by trial courts. In that regard the following are notable:

- (i) In *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, 25 March 2026) at para. 1 *per* Donnelly J. (O'Donnell C.J., Charleton and Murray JJ. concurring) (see also *per* Finlay C.J. in *the State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642 at p. 654 (Hamilton P. concurring); *per* Denham J. in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at p. 743; *Sweeney v. Fahy* [2014] IESC 50 (Unreported, Supreme Court, 31 July 2014) *per* Clarke J. (Dunne J. concurring) at paras. 3.8-3.15), the Supreme Court emphasised that judicial review is concerned with the **legality rather than the merits of the decision**.
- (ii) In *Coolglass Wind Farm Ltd v. An Coimisiún Pleanála* [2026] IESC 5 (Unreported, Supreme Court, O'Donnell C.J., 4 February 2026) para. 118(xiv), the Supreme Court emphasised the relevance of the extent to which submissions on a given point were made to the decision-taker, which decision is consistent with the general principle that, apart from autonomous-type obligations, material capable of sustaining the point must have been properly **put before the decision-taker** at the relevant time such as to give rise to a duty to consider it.
- (iii) In *A.P. v. Director of Public Prosecutions* [2011] IESC 2, [2011] 1 I.R. 729, [2011] 2 I.L.R.M. 100, [2011] 1 JIC 2501; *Khashaba v. Medical Council* [2016] IESC 10, [2016] 3 JIC 0701, 2016 WJSC-SC 12280 *per* O'Malley J. (Denham C.J. and Clarke

- J. concurring) at para. 56; *Casey v. Minister for Housing, Planning and Local Government & Ors.* [2021] IESC 42, [2021] 7 JIC 1606 (Unreported, Supreme Court, Baker J., 16 July 2021) (Clarke C.J., O'Donnell, MacMenamin and Dunne JJ. concurring) at §§29 and 31; *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála & Ors.* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024) *per* Murray J. at paras. 39 *et seq.* (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring), the Supreme Court emphasised that applicants are **confined to their pleadings**.
- (iv) In *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024), *per* Murray J. (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring), the Supreme Court emphasised that **complex EU law arguments need to be articulated on the pleadings with particular clarity**. In *Hellfire Massy Residents Association v. An Bord Pleanála* [2022] IESC 38, [2024] 1 I.R. 386, [2022] 10 JIC 2402 *per* O'Donnell C.J. at para. 22 (Dunne, Woulfe, Hogan and Murray JJ. concurring), and *per* MacMenamin J. (Fennelly and Clarke JJ. concurring) in *Babington v. Minister for Justice Equality and Law Reform & Ors.* [2012] IESC 65 (Unreported, Supreme Court, 18 December 2012) at para. 7, the Supreme Court emphasised that scattergun pleadings are inappropriate.
- (v) In *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, 25 March 2026) at para. 96 *per* Donnelly J. (O'Donnell C.J., Charleton and Murray JJ. concurring) (see also *per* Denham J. (Murray C.J. and Fennelly J. concurring) in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at p. 743; *O'Doherty and Waters v. Minister for Health* [2022] IESC 32, [2023] 2 I.R. 488, [2022] 1 I.L.R.M. 421 *per* O'Donnell C.J. (Irvine P., MacMenamin, O'Malley, Baker and Murray JJ. concurring) at para. 116), the Supreme Court emphasised that an applicant must have discharged the **onus of proof** to establish all facts necessary for relief. As stated by Collins J. in *RGRE Grafton Ltd v Bewley's Café Grafton Street Limited* [2026] IESC 10, §83: "Discharging the burden of proof requires evidence of sufficient adequacy to enable a reliable assessment of probability." As stated in *RAS Medical Ltd v. Royal College of Surgeons in Ireland* [2019] IESC 4, [2019] 1 I.R. 63, [2019] 2 I.L.R.M. 273 (Clarke C.J.) (O'Donnell, MacMenamin, Dunne and Finlay Geoghegan JJ. concurring), "Factual issues in all court proceedings are determined on the basis of evidence properly before the court" (at para. 6.1). In *An Taisce v. An Bord Pleanála & Ors.* [2022] IESC 8, [2022] 2 I.R. 173, [2022] 1 I.L.R.M. 281 *per* Hogan J. at para. 124 (O'Donnell C.J., Dunne, Charleton and Woulfe JJ. concurring), the Supreme Court took the approach that in the context of a challenge to an environmental assessment, the onus of proof to show a defect generally lies on the applicant. The Supreme Court recently referred to this as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanála* [2026] IESCDET 113 at 9(ii) and 14. As held by Charleton J. in *Sweetman v Shell E&P Ireland Limited and Ors* [2016] IESC 58 at §20, "[l]itigants must conduct their actions for a fair purpose of the protection of the environment. They cannot scatter unfounded allegations around without any indication of proof or potential proof."
- (vi) Where there is a conflict of admissible evidence, in the absence of cross-examination such a conflict must generally be **resolved against the party carrying the onus of proof**: *RAS Medical Ltd v. Royal College of Surgeons in Ireland* [2019] IESC 4, [2019] 1 I.R. 63, [2019] 2 I.L.R.M. 273 (Clarke C.J.) (O'Donnell, MacMenamin, Dunne and Finlay Geoghegan JJ. concurring). The Supreme Court recently referred to the need for an applicant to displace the validity of assessment methodology as accepted by a planning decision-taker as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanála* [2026] IESCDET 113 at 9(vi) and 14.
- (vii) In *Walsh v. Jones Lang Lasalle Ltd* [2017] IESC 38 (Unreported, Supreme Court, 1 June 2017) at para. 47; *per* O'Donnell C.J. (Dunne, Charleton and Baker JJ. concurring) in *O'Sullivan v. Health Service Executive* [2023] IESC 11 (Unreported, Supreme Court, 10 May 2023) at para. 37 (see also *Moore v. Dun Laoghaire Rathdown County Council* [2016] IESC 70, [2017] 3 I.R. 42, [2017] 2 I.L.R.M. 21 (Clarke, Laffoy and O'Malley JJ.) para. 4.8; *Pembroke Road Association v. An Bord Pleanála* [2022] IESC 20, [2022] 2 I.L.R.M. 417 *per* Hogan J. (MacMenamin, Charleton, O'Malley and Baker JJ. concurring); *Save Cork City Community Association CLG v. An Bord Pleanála* [2022] IESC 52, [2024] 1 I.R. 205 *per* Woulfe

- J. (Dunne, Charleton, O'Malley and Hogan JJ. concurring) at 60), the Supreme Court adopted an approach that is consistent with the view that it is not appropriate to engage in legalistic **over-parsing** or micro-analysis of decisions, or of legal instruments generally.
- (viii) As regards interpretation of planning instruments it was held in *In re XJS Investments Ltd* 1986 WJSC-SC 1935, [1986] IR 750, [1987] ILRM 659, [1986] 12 JIC 1102, that "Certain principles may be stated in respect of the true construction of planning documents ... They are to be **construed in their ordinary meaning** as it would be understood by members of the public, without legal training **as well as by developers and their agents**, unless such documents, read as a whole, necessarily indicate some other meaning."
 - (ix) In *E.M. v. Minister for Justice and Equality* [2024] IESC 3 (Unreported, Supreme Court, 21 February 2024) *per* Dunne J. (Charleton, Woulfe, Murray and Donnelly JJ. concurring), the Supreme Court adopted an approach that is consistent with the view that a decision **should not be read as invalid** if a valid reading is reasonably available. The Supreme Court recently referred to such an approach to the reading of decisions as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanála* [2026] IESCDet 113 at 9(viii) and 14.
 - (x) In *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, Woulfe J., 11 April 2024) (Charleton, O'Malley, Baker and Murray JJ. concurring), the Supreme Court decided that a planning decision-taker is required, where it relevantly arises, to **address the text of development plans** and enjoys a zone of evaluative judgement in relation to development plan provisions that involve flexibility.
 - (xi) In *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] IESC 25, [2008] 3 I.R. 795, *per* Denham J. (Murray C.J., Fennelly, Kearns and Finnegan JJ. concurring); *per* Clarke J. (Fennelly and MacMenamin JJ. concurring) in *Rawson v. Minister for Defence* [2012] IESC 26 (Unreported, Supreme Court, 1 May 2012) at para. 6.9, the Supreme Court approached the question of reasons on the basis that there is no obligation to provide a **discursive, narrative consideration** of submissions or to "engage with" submissions in such a sense, or to provide an issue-by-issue or submission-by-submission response. The Supreme Court recently referred to the finding of a lack of obligation to "engage with" submissions, as opposed to the giving of reasons to the appropriate standard, as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanála* [2026] IESCDet 113 at 9(ii) and 14.
 - (xii) In *Connelly v. An Bord Pleanála* [2018] IESC 31, [2018] 2 I.L.R.M. 45 (Clarke C.J.) (O'Donnell, Dunne, O'Malley and Finlay Geoghegan JJ. concurring); *per* Finlay C.J. (Griffin, Hederman and Lynch JJ. concurring) in *O'Keefe v. An Bord Pleanála* [1993] 1 I.R. 39, [1992] I.L.R.M. 237 at p. 76; *Faulkner v. Minister for Industry and Commerce* 1997 WJSC-SC 962, [1996] 12 JIC 1007 (Unreported, Supreme Court, 10 December 1996) *per* O'Flaherty J. (Hamilton C.J. and Barrington J. concurring), the Supreme Court approached the standard as to reasons in a way that can be reasonably summarised as an obligation to provide the **main reasons on the main issues**.
 - (xiii) In *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752, [2018] 2 I.L.R.M. 453, para. 9.2 *per* Clarke C.J. (O'Donnell, Dunne, O'Malley and Finlay Geoghegan JJ. concurring); *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, 11 April 2024) *per* Woulfe J. (Charleton, O'Malley, Baker and Murray JJ. concurring) at para. 129, the Supreme Court approached the question of reasons on the basis that **reasons may be found anywhere**, not necessarily in the decision itself, for example in an inspectors report, or in documentation before the decision-taker: *Killegland Estates Ltd v Meath County Council* [2023] IESC 39 (§71), *Lanigan v Barry* [2016] IESC 46; [2016] 1 I.R. 656.
 - (xiv) In *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, [2002] 1 I.L.R.M. 401 *per* Hardiman J. (Geoghan and Denham JJ. concurring), the Supreme Court decided that there is a presumption (the onus to rebut which falls on a judicial review applicant) that **material has been considered** if the decision-taker says so (see also *Rana v. Minister for Justice* [2024] IESC 46 (Unreported, Supreme Court, O'Malley J., 18 October 2024), para. 91 (Dunne, Hogan, Collins and Donnelly JJ. concurring); *An Taisce v. An Bord Pleanála & Ors.* [2022] IESC 8, [2022] 2 I.R. 173, [2022] 1 I.L.R.M. 281 *per* Hogan J. (O'Donnell C.J., Dunne, Charleton and Woulfe

- JJ. concurring) at para. 137). The Supreme Court recently referred to this as “well-established” in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanála* [2026] IESCDT 113 at 9(i) and 14.
- (xv) In *G. v. DPP* [1994] 1 I.R. 374 *per* Finlay C.J. (Blayney and Denham JJ. concurring) at p. 378 and subsequent cases, the Supreme Court decided that judicial review is a **discretionary remedy** within established doctrinal boundaries (see also *De Róiste v. Minister for Defence* [2001] IESC 4, [2001] 1 I.R. 190, [2001] 2 I.L.R.M. 241 at 204 *per* Denham J.; *Kenny v. Dublin City Council* [2009] IESC 19 (Unreported, Supreme Court, 5 March 2005) at 79 *per* Fennelly J. (Macken and Peart JJ. concurring); *Kelly v. Minister for Agriculture* [2021] IESC 62, [2023] 1 I.R. 38 *per* O'Donnell J. (Clarke C.J. and Dunne J. concurring); *Save Cork City Community Association CLG v. An Bord Pleanála* [2022] IESC 52, [2024] 1 I.R. 205 at 60 *per* Woulfe J. (Dunne, Charleton, O'Malley and Hogan JJ. concurring); *Ballyboden Tidy Towns Group v. An Bord Pleanála* [2024] IESC 4 (Unreported, Supreme Court, Donnelly J., 22 February 2024) (O'Donnell C.J., Woulfe, Hogan and Collins JJ. concurring); *S. v. Minister for Justice and Equality* [2025] IESC 48 (Unreported, Supreme Court, 25 November 2025) *per* Dunne J. (Charleton, Woulfe, Collins and Donnelly JJ. concurring) at 98; *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton and Murray JJ. concurring).

70. It is the function of a trial court to apply such principles here. While I appreciate the sincerity of the applicant as a representative of local opinion, and the very considerable expenditure of imagination and effort made to present the case on their behalf, the legal question here is whether any sufficiently convincing legal reason has been demonstrated to displace the foregoing.

Domestic law issues

Core ground 1 - CDP

71. Core ground 1 is:

“1. The impugned decision is invalid and made contrary to fair procedures and s.34(2) of the Planning and Development Act, 2000, as amended, because when making its decision An Coimisiún erred in its interpretation of, and failed to have regard to, properly or at all, Objectives LI-I-02 and or LI-X-01 and or ZU-18-5 and or BE-15-6 of the Cork County Development Plan 2022-2028 and or erred in failing to give reasons for its decision in light of these objectives and the associated provisions in paragraphs 2.6.49 to 2.6.52 of Volume 4 of the County Development Plan and paragraph 18.2.2 in Volume 1 of the Development Plan. Further particulars are set out in Part 2 below.”

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

“Core Ground E1

The Applicant submits:

1. The impugned decision is invalid and made contrary to fair procedures and s.34(2) of the Planning and Development Act, 2000, as amended because when making its decision the Commission erred in its interpretation of, and failed to have regard to, properly or at all, Objectives LI-I-02 and or LI-X-01 and or ZU-18-5 and or BE-15-06 of the Cork County Development Plan 2022-2028 and or erred in failing to give reasons for its decision in light of these objectives and the associated provisions in paragraphs 2.6.49 to 2.6.52 of Volume 4 of the County Development Plan and paragraph 18.2.2 in Volume 1 of the Development Plan.

2. The Applicant has pleaded that the Inspector erred and led the Commission into error by interpreting Objectives LI-I-02 and LI-X-01 to mean that responsibility for ensuring an adequate buffer distance between the industrial zoned lands in the area zoned LI-I-02 (on which Country Clean proposes to construct its waste facility) and the residential lands zoned LI-X-01 immediately to the north, lies with the developers of the residential lands. The Applicant has pleaded that this is a wrong interpretation of the zonings and objectives of the Cork County Development Plan and the decisionmaker fell outside its jurisdiction in making the decision.

The Commission submits -

3. The Inspector and Commission did not misinterpret and/or fail to have regard to Objectives LI-I-02 and/or LI-X-01 and/or ZU-18-5 and/or BE-15-06, as alleged or at all. In particular, the requirement under the Special Policy Area Objective LI-X-01 - to include a 'buffer between development and adjoining industrial use' - was interpreted without error. According the text of Objective LI-X-01 'its ordinary meaning as it will be understood by member of the public without legal training' on Sherwin principles, the Inspector determined that the buffer requirement thereunder related to an obligation on behalf of the developer (in this instance, Ruden Homes Ltd) of the Special Policy Area lands zoned LI-X-01 to include

a buffer between those lands and the adjoining industrial land uses, including the NP lands zoned LI-I-02 to the south.

4. The Commission decision requires to be read in a way that renders it valid, where such a reading is available. Further, the Applicant has not discharged the onus to show any misinterpretation of the CDP as regards Objectives LI-I-02 and/or LI-X-01 and/or ZU-18-5 and/or BE-15-06: see O’Keeffe. There was ample evidence before the Commission on which to reach the conclusions it did and the Applicant’s complaint under this core ground is in the nature of an impermissible merits based challenge to the Commission decision.

5. Further and as regards paragraph (f) of Objective BE-15-06, the Commission pleads that the Applicant has failed to demonstrate how this objective - predicated on ‘unavoidable impacts on biodiversity’ occurring as a result of permitted development - applies to the instant application, having regard to the Commission’s AA conclusion. The Applicant bears on the onus of proof in this respect and has further failed to demonstrate any impacts on biodiversity by way of expert evidence.

6. The Applicant’s alternative plea of an alleged failure to give reasons effectively amounts to a request for a specific form of reasons, for which there is no basis in the authorities: see *Connolly v An Board Pleanála* [2018] IESC 31; [2021] 2 IR 752; *Balscadden Road SAA Residents Association Limited v An Board Pleanála* [2020] IEHC 586.

The First Notice Party submits

7. The First Notice Party adopts the position of the Commission in respect of this ground of challenge and adds as follows:

8. The applicant’s case focuses on the zoning of the adjoining lands (LI-X-01) and largely omits to mention the zoning of the Country Clean lands (LI-I-02). A complete assessment of both zonings is required to give a fully informed view.

9. The Applicant has failed to display how it is said that the Commission unlawfully interpreted Objectives LI-I-02 and LI-X-01 other than stating what they think it means i.e. that responsibility for ensuring an adequate buffer distance between the industrial zoned lands in the area zoned LI-I-02 (on which Country Clean proposes to construct its waste facility) and the residential lands zoned LI-X-01 immediately to the north, lies with the developers of the residential lands. The Commission lawfully interpreted and applied the said Objective.

10. Condition 91 of the [Ruden] Homes permission confirms ‘The form, nature and extent of the buffer shall be determined by way of future planning application.’

11. The Further Information request issued by the Council on the 9 September 2024 in the [Ruden] homes case clearly illustrates the [Council’s] knowledge of litigation with adjoining site.

12. The First Notice Party have included a 20m buffer on their western boundary included in the permitted documents. The inclusion of the requirement of the residential zoning (LI-X-01) to categorically include landscape buffering whilst concurrently the requirement for landscape buffering was deleted from CCR site (LI-I 01) is a clear direction as to where the buffer should be demonstrating that the council considered it and zoned each parcel appropriate.

Ruden Homes submits:

‘13. Ruden Homes makes submissions in the context of Core Ground 1 limited to (and for the purpose of) providing submissions to this Court in respect of the interpretation of Objective LI-X-01 of the Cork County Development Plan 2022-2028 (“CDP”). It is Ruden’s Homes’ position that, properly interpreted by way of XJS Principles, Objective LI-X-01 requires a buffer to be located on the Special Policy Area but only between ‘new residential development and adjoining industrial uses to the east’.

14. Ruden Homes submits that three aspects of the CDP are relevant for the Court’s consideration in properly interpreting Objective LI-X-01 by way of the XJS standard, namely: (i) the land use zoning maps which demonstrate the areas at issue and their relevant zoning, (ii) the wording of Objective LI-X-01 itself and (iii) paragraphs 2.6.49-2.6.53 of the CDP which specifically address the operation of Objective LI-X-01:

1. The Proposed Development, the subject matter of the within proceedings, is located to the south of the Special Policy Area, and the proximity of the sites is shown clearly in the Little Island – Land Use Zonings Map (page 157 of Volume 4 of the CDP). The Proposed Development is on lands zoned for ‘Industry’ (marked in blue) whereas the lands to the east of the Special Policy Area are marked in pink, denoting a land use zoning of ‘Existing Mixed/General Business/Industrial Uses’.

2. Objective LI-X-01 is a ‘Specific Development Objective for Little Island’. Part of Objective LI-X-01 requires that, in the context of residential development, there be a ‘buffer between development and adjoining industrial use’ (emphasis added). Having regard to the

land use zoning map for Little Island (page 157 of Volume 4 of the CDP), the lands to the east (marked in pink) are zoned 'Existing Mixed/General Business/Industrial Uses'(emphasis added). Therefore, if or when the lands in the Special Policy Area are developed for residential use, a buffer will be required to be placed on the Special Policy Area between it and the lands to the east (marked in pink). However, there is no requirement for a buffer to be placed between the Special Policy Area and the land to the south, which is the site of the Proposed Development, as that is not zoned for 'industrial uses' but has a separate land use zoning of 'Industry'.

3. Ruden Homes submits that its interpretation of Objective LI-X-01 is further supported by §§2.6.49-2.6.53 of the CDP, which specifically address Objective LI-X-01, and Ruden Homes places particular emphasis on §2.6.50, wherein it states: '2.6.50 It is important that this development be integrated into the surrounding land uses, to ensure appropriate protection of the adjoining residential land use and to ensure an appropriate landscaping buffer between new residential development and adjoining industrial uses to the east.'

15. As such, Objective LI-X-01 does not require a buffer between the Special Policy Area and the site of the Proposed Development; it requires a buffer between 'new residential development and adjoining industrial uses to the east'. Insofar as it is contended that lands zoned for 'Industrial Uses' and 'Industry' are the same or should be read as being one and the same, this is not correct (and, in any event, even if they were, no lands zoned 'Industry' are to the east of the Special Policy Area). Section 18.3 of the CDP addresses 'Land Use Zoning Categories' and addresses 'Existing Mixed/General Business/Industrial Uses (MGB)' (at §18.3.10) as distinct from 'Industrial Areas (I)' (which are addressed at §18.3.40). A review of those aspects of the CDP demonstrates distinctions between the two land use zonings, which again is reflected in the land use zoning maps. It is also clear that the primary policy purpose for these zoning categories is also different, having regard to Objective ZU 18-10 and ZU 18-16. Objective ZU 18-10, which applies to 'Existing Mixed/General Business/Industrial Uses (MGB)', places a focus on protecting and supporting existing employment uses, whereas ZU 18-16, which applies to 'Industrial Areas (I)', prioritises the development of industrial activity that would potentially not be suitable for other zonings.

16. Ruden Homes' position on what it considers to be the proper interpretation of Objective LI-X-01 is further supported by the manner in which the Objective was interpreted by the Council (i) when it addressed the Commission on the Proposed Development and (ii) in the decision to grant planning permission for a Large-Scale Residential on 4 December 2024 (Reg. Ref. 24/5328) (the 'LRD Permission') to Ruden Homes Limited for lands located in the Special Policy Area:

(i) The Council addressed the Commission on the Proposed Development (remitted application) in a submission dated 8 November 2024 and notably did not suggest that a buffer was required on the Special Policy Area between it and the Proposed Development. Rather, the Council referred to Transitional zoning objective (Objective ZU 18-5) contained in Chapter 18 of Volume 1 of the CDP.

(ii) Condition 91 of the LRD Permission indicates that the Council's view was that a buffer at the southern boundary of the Special Policy Area was not required, and that no buffer along the linear buffer zone between the Special Policy Area and the lands to the east was permitted as part of the grant of permission. The condition is clear that the form and extent of the buffer is to be determined by way of a future planning application. Insofar as it is suggested that the Council did not express any view and simply left the matter over until a planning application was lodged in respect of the third parcel, this is not correct. Significantly, the Planner had originally suggested that there be a buffer along the 'entire southern site boundary' which would include the southern boundary of the LRD site, but this was dropped after the response to RFI and no condition was provided that such a buffer was required. Whereas it is clear that the eastern buffer would not have been required as no development was taking place on the third parcel of the Special Policy Area, development consent was granted for part of the southern boundary of the Special Policy Area. Therefore, if the Council had considered that Objective LI-X-01 required a buffer along the entire southern boundary of the site of the LRD application, it would not have included condition

17. Finally, it appears to Ruden Homes that the Commission fell into error in interpreting Objective LI-X-01 on a number of grounds. Firstly, the Commission's Inspector interpreted Objective LI-X-01 by reference to the 2017 local area plan and changes that were brought forward in the CDP (§4.3.14 et seq of the Inspector's Addendum Report). However, as explained in *GOCE v An Bord Pleanála* [2024] IEHC 554 at §16, 'it is not appropriate to interpret a development plan by comparing it to an earlier plan'. Secondly, the Inspector

incorrectly summarises §2.6.50 of the CDP and fails to include reference to the buffer applying 'to the east', which error is reflected in page 3 of the Commission Order. Thirdly, the Commission's position is that Ruden Homes Limited would be responsible for a buffer between the Special Protection Area and the Proposed Development, which is not accepted, but cannot be correct where there is no development consent on the third parcel of the Special Policy Area, and this evidences a fundamental misunderstanding of the operation of Objective LI-X-01 and its application to the facts at issue.

18. Having regard to the foregoing, properly interpreted by way of XJS Principles, Objective LI-X-01 does require a buffer on the Special Policy Area but only 'between new residential development and adjoining industrial uses to the east'.

The Council submits:

19. The Council participates to assist the Court only in respect of Core Ground E1 and takes no position on the other Core Grounds.

20. On Core Ground E1, the Council submits that, when Objective LI-X-01, paragraphs 2.6.49 and 2.6.50 and the wider provisions of the CDP are read together, the landscape and spatial buffer required by Objective LI-X-01 applies where future residential development within LI-X-01 adjoins the LI-I-02 Industry zone. The Council accepts that paragraph 2.6.50 is specifically directed to the established Existing Mixed/General Business/Industrial Uses ('MGBI') interface 'to the east' and that those words must be given full effect, but does not consider that they exhaustively limit the unqualified wording 'adjoining industrial use' in Objective LI-X-01. The detailed form, width and extent of that buffer are not fixed by the CDP and fall to be addressed through the framework plan and development management process. The express buffering requirement in Objective LI-I-02 is directed to the Cork Harbour Special Protection Area and does not, in terms, prescribe a residential amenity buffer between LI-I-02 and LI-X-01.

21. Separately, development within LI-I-02 remains subject to Objective ZU-18-5, paragraph 18.2.2, paragraph 2.6.24 and Objective LI-GO-06 and must avoid or appropriately mitigate unacceptable effects upon existing or future residential amenity. Objective BE-15-06 is of more limited relevance and does not determine the location or extent of the residential/industrial amenity buffer.

22. The Council therefore differs from the Applicant insofar as Core Ground E1 is advanced on the basis that the relevant buffer must be provided on the LI-I-02/Country Clean lands rather than within LI-X-01, although the Council agrees that the Country Clean proposal is subject to independent mitigation obligations. The Council agrees with the Commission and the First Notice Party to the extent that they contend that the LI-X-01 buffer obligation can apply at the interface with LI-I-02, but would qualify that position insofar as it might be understood as placing exclusive responsibility for achieving compatibility on the developer of LI-X-01. The Council also does not adopt the First Notice Party's proposition that the zoning history itself categorically determines that all buffering responsibility lies on LI-X-01.

23. The Council differs from Ruden Homes' submission that Objective LI-X-01 is confined to the eastern MGBI interface and from its reliance on the Ruden Homes permission and Condition 91 as establishing that no buffer is required at the southern interface: the permission related only to part of LI-X-01, the direct southern interface with LI-I-02 remained within a future phase, and Condition 91 addressed only the illustrated eastern buffer.

24. The Council also notes that the Inspector's quotation of paragraph 2.6.50 omitted the words 'to the east'; its agreement with the substance of the Inspector's ultimate conclusion is based on the full wording of Objective LI-X-01 and paragraphs 2.6.49 and 2.6.50 read in the context of the CDP as a whole.

25. Even if the Court were to accept Ruden Homes' narrower construction of the express LI-X-01 buffer, the independent transitional zone and residential amenity obligations applicable to development within LI-I-02 would remain."

73. A zoning map relating to the site is set out at p. 157 of vol. 4 of the 2022-28 CDP. Key features are:

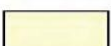
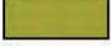
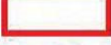
- (i) The development site is part of an industrial zoned area in blue LI-I-02;
- (ii) To the north is a residential area LI-X-01 coloured white – the part of this adjoining the development site to its immediate north was zoned industrial under the previous plan (as of the date of the quashed decision) but was zoned residential in the 2022 plan (as of the date of the remitted decision here);
- (iii) That area is split by a proposed road LI-U-05; and
- (iv) To the west of the development site is residential reserved land LI-RR-01 coloured green, largely an old golf course.

74. The site is in area LI-I-02 in the development plan (in blue – this development location is starred (star helpfully added by counsel)):



75. The legend is:

Land Use Zonings

	Business and General Employment
	Community
	Existing Mixed/General Business/Industrial Uses
	Existing Residential/Mixed Residential and Other Uses
	Green Infrastructure
	Industry
	Residential Reserve
	Special Policy Area
	ROAD
	WALK/CYCLE
	Flood Zone A
	Flood Zone B
	Development Boundary

76. The three objectives cited in core ground 1 are "Objectives LI-I-02 and or LI-X-01 and or ZU-18-5 and or BE-15-6 of the Cork County Development Plan 2022-2028".

77. Of these:

- (i) ZU-18-5 and or BE-15-6 is in volume 1:
(<https://www.corkcoco.ie/sites/default/files/2022-06/volume-1-main-policy-material.pdf>); and
- (ii) Objectives LI-I-02 and LI-X-01 are in volume 4:
(<https://www.corkcoco.ie/sites/default/files/2022-06/volume-4-south-cork.pdf>).

78. Objective ZU 18-5 is:

"County Development Plan Objective ZU 18-5: Transitional Zones Have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries."

79. Objective BE 15-6 is (emphasis added):

"County Development Plan Objective BE 15-6: Biodiversity and New Development
Provide for the protection and enhancement of biodiversity in the development management process and when licensing or permitting other activities by: a) Providing ongoing support and guidance to developers on incorporating biodiversity considerations into new development through preplanning communications and the Council's guidance document 'Biodiversity and the Planning Process – guidance for developments on the management of biodiversity issues during the planning process' and any updated versions of this advice; b) Encouraging the retention and integration of existing trees, hedgerows and other features of high natural value within new developments; c) Requiring the incorporation of primarily native tree and other plant species, particularly pollinator friendly species in the landscaping of new developments; d) Fulfilling Appropriate Assessment and Environmental Impact Assessment obligations and carrying out Ecological Impact Assessment in relation to development and activities, as appropriate; e) Ensuring that an appropriate level of assessment is completed in relation to wetland habitats subject to proposals which would involve drainage or reclamation. This includes lakes and ponds, watercourses, springs and swamps, marshes, heath, peatlands, some woodlands as well as some coastal and marine habitats; f) Ensuring that the implementation of appropriate mitigation (including habitat enhancement, new planting or other habitat creation initiatives) is incorporated into new development, **where the implementation of such development would result in unavoidable impacts on biodiversity** - supporting the principle of biodiversity net gain."

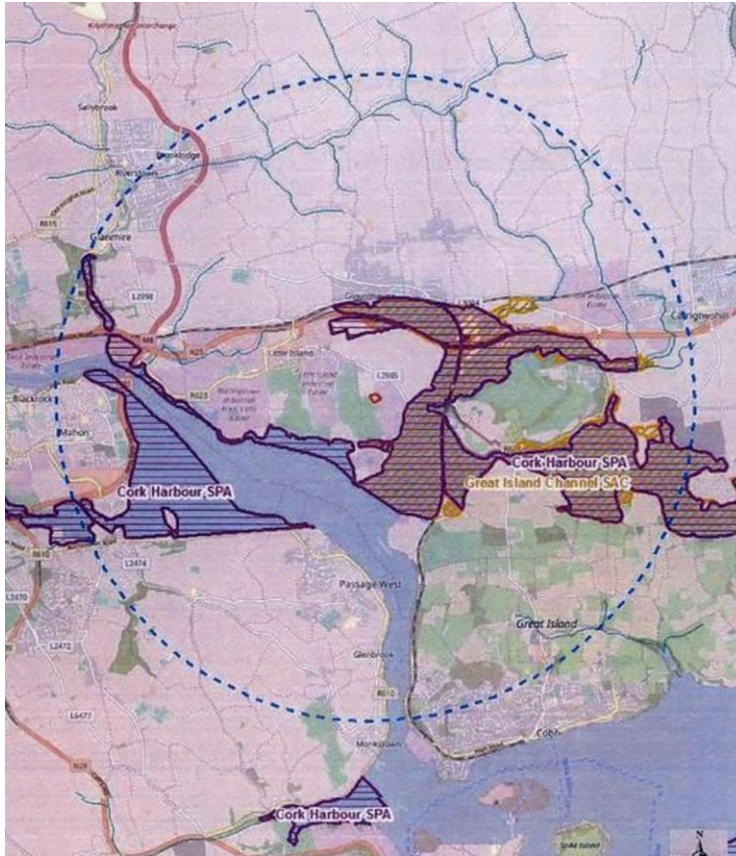
80. Both of these are very general evaluative objectives without any mandatory specific rule as to how to deal with transitional areas. No question of breach of these arises or has been established here. In particular, the requirement of mitigation in BE-15-6(f) only applies where there are unavoidable impacts on biodiversity – that cannot be assumed, but needs to be established evidentially. That is not something the applicant has succeeded in doing (or particularly attempted).

81. The applicant's case is predicated on the need for a buffer zone within the first-named notice party's lands which are designated LI-I-02.

82. Objective LI-I-02 is:

(Emphasis added) "Industrial estate and/or warehousing and distribution with provision for local access road. This site is located in close proximity to the Cork Harbour Special Protection Area. **Appropriate buffering and screening between new development and the SPA will be required.** Areas within this site may be used by Special Conservation Interest bird species for which the Cork Harbour SPA is designated. Account will be taken of same when considering new development proposals in this area."

83. This relates to a different form of buffer, that between the LI-I-02 lands and the SPA, which is located both to the north and south (the development site is at the centre of the circle below):



84. While the demand to consider effects on species on non-contiguous areas makes sense, the suggestion of a buffer between non-contiguous lands and the SPA makes somewhat less sense and seems to be something of a general objective which is replicated in a couple of headings of objectives, e.g. LI-I-05, rather than as something breach of which would be fatal to a development at some remove from the SPA (such as this site).

85. The point in relation to this particular parcel of land is that there is already a substantial buffer zone between LI-I-02 and the SPA to the north in the form of LI-X-01 to the north. It is implausible to suggest that there was any contravention of the development plan in not having or considering a further buffer zone by sterilising part of the development site to the north. No breach of the plan has been made out.

86. Objective LI-X-01 is:

(emphasis added) **"Medium A density residential development, small scale, local neighbourhood centre, high quality public open space (including buffer between development and adjoining industrial use) and public realm.** To provide for future high quality pedestrian and cycle connectivity with LI- RR-01. Development of this area will be subject to an approved framework plan for its overall development. This zone is located in close proximity to the Cork Harbour SPA. Areas within this zone may be used by Special Conservation Interest bird species for which the Cork Harbour SPA is designated. Account will be taken of same when considering new development proposals in this area."

87. One striking point about this objective is that it does not actually say that any particular buffer zone is mandatory. It sets out an objective but does not state that every development and every adjoining industrial use has to have any specified form of buffer.

88. There were two questions about how this is to be interpreted:

- (i) Does there need to be a buffer at all between LI-X-01 and LI-I-02?
- (ii) If so, does the plan require the buffer to be located within LI-I-02?

89. On the first question, Volume 4 of the CDP includes the following:

(emphasis added) "Special Policy Areas

2.6.49 Comprising approximately 22.9 hectares of land, a large portion of this site in the south east of Little Island lies within an area that was previously operated as a golf club and which has been closed since 2009. The land provides a substantial buffer between areas of residential development and areas of industrial development. The special policy area has been extended in this plan to include adjoining land to the east that was zoned for industrial development in the 2017 Local Area Plan.

2.6.50 In the context of the vision for Little Island, it is considered appropriate to facilitate **the development of this key site** over the lifetime of this plan so as to achieve a better balance of employment and housing. **It is important that this development be integrated into the surrounding land uses, to ensure appropriate protection of the adjoining residential land use and to ensure an appropriate landscaping buffer between new residential development and adjoining industrial uses to the east.** Development of this site will require the provision of high frequency public transportation links to serve the area.

2.6.51 The objective for the site is to deliver compact residential development in tandem with a high quality, small scale, local neighbourhood centre, school, public realm and open space. The development is to facilitate excellent quality of life and establish a strong and attractive sense of place.

2.6.52 The adjoining land to the south was subject to a special policy area zoning objective in the 2017 Local Area Plan. It is considered that this area will be suitable, in the future, for a significant element of residential development combined with business development and a substantial area of high quality, public open space for recreation. This site will contribute to the sustainable expansion of Little Island's residential community to achieve a better balance between employment and residential land use for the settlement. It will be important that high quality pedestrian and cycle connectivity between this land and the LI-X-01 site be provided. In recognition of the future potential of this site it has been designated as residential reserve in this plan.

2.6.53 Access to the eastern side of the site should be from the Courtstown Road to avoid increased traffic movements on the Clash Road."

90. The text refers to a buffer zone to lands to the east whereas the objective is not so qualified. The industrial lands are in fact to both the east and south of the residential lands (the development site being to the south of those lands).

91. The reasonable XJS reader of the CDP will have regard to the three broad headings to be taken into account in statutory interpretation generally (not forgetting that development plans are instruments made under statute) - that is, text (the primary lens), context and purpose. The logic of a buffer zone between residential and industrial lands is not limited to one particular direction on the compass. The logic is equally applicable to lands to the south as to the east, particularly where the more imperative provision (the objective) is more general than the text.

92. There was a contest about whether "adjoining industrial use" was limited to lands on which industrial use was the sole use (pink lands) as contended for by Ruden Homes, or also covered lands in which industrial use was permitted as part of "industry" (blue lands). Ruden Homes submit:

"22. Part of Objective LI-X-01 **requires** that, in the context of residential development, there be a **'buffer** between development and **adjoining industrial use'**. Having regard to the land use zoning map for Little Island (page 157 of Volume 4 of the CDP), the lands to the east (marked in pink) are zoned 'Existing Mixed/General Business/**Industrial Uses**' (emphasis added). Therefore, if or when the lands in the Special Policy Area are developed for residential use, a buffer will be required to be placed on the Special Policy Area between it and the lands to the east (marked in pink). However, there is no requirement for a buffer to be placed between the Special Policy Area and the land to the south, which is the site of the Proposed Development, as that is not **zoned for** 'industrial uses' but has a separate land use zoning of 'Industry'." (emphasis added)

93. This is the sort of micro-analysis of plans, that are not written by lawyers, that the XJS approach is meant to avoid. A reasonable XJS reader would not see any meaningful distinction between industry and industrial use. Nor is the reference to industrial use phrased in terms of *zoning* for industrial use – the words "zoned for" towards the end of the above quoted paragraph do not appear in the objective. Nor indeed does the objective use the word "require". Critically, the objective does not use the word "east" either – Ruden Homes are getting that by implication from the misconceived argument that industrial use doesn't include industry and thus doesn't cover lands to the south.

94. They go on later to seize on the word "east" in the text, but again we need to read objective and text harmoniously.

95. There is no logical basis for the postulated distinction between the zoning definitions as being the fault-line for the application of the buffer zone – if there should be a buffer between housing and industrial use then there should be a buffer zone, and the land use zoning doesn't particularly matter. The postulated distinction between industry and industrial use is hard to see as particularly meaningful in practice – if industrial structures are built, they will presumably be used for an industrial use. Nor is direction on a compass logically critical – industry cheek by jowl with housing is presumably just as bad if it lies slightly to the south of the housing versus slightly to the east.

96. The Ruden Homes submission continues:

"29. It is also clear that the primary policy purpose for these zoning categories is also different, having regard to Objective ZU 18-10 and ZU 18-16, which have been outlined in the above quotes from the CDP. Objective ZU 18-10, which applies to 'Existing Mixed/General Business/Industrial Uses (MGB)', places a focus on protecting and supporting existing employment uses, whereas ZU 18-16, which applies to 'Industrial Areas (I)', prioritises the development of industrial activity that would potentially not be suitable for other zonings."

97. The postulated distinction is not particularly material in practice and again it is important to recall that the objective and text are not phrased in terms of zoning categories. For the person living in a house right beside an industrial plant, she doesn't particularly care what technical zoning label allowed that plant to be built beside her. The fact that different parcels have different zonings is as may be, but it doesn't affect the key point that the zonings on both the pink and blue parcels allow industrial structures and uses which in turn can have impacts on housing and thus require whatever buffering is "appropriate".

98. As regards condition 91, Ruden Homes submit:

"41. In Ruden Homes' view, Condition 91 indicates that the Council's view was that a buffer at the southern boundary of the Special Policy Area was not required, and that no buffer along the linear buffer zone between the Special Policy Area and the lands to the east was permitted as part of the grant of permission. The condition is clear that the form and extent of the buffer is to be determined by way of a future planning application.

42. Insofar as it is suggested that the Council did not express any view and simply left the matter over until a planning application was lodged in respect of the third parcel, this is not correct. Significantly, the Planner had originally suggested that there be a buffer along the 'entire southern site boundary' which would include the southern boundary of the LRD site (parcel 2 of the Special Policy Area), but this was dropped after the response to RFI and no condition was provided that such a buffer was required. Therefore, if the Council had considered that Objective LI-X-01 required a buffer along the entire southern boundary of the site of the LRD application, it would not have included condition 91."

99. Unfortunately, this reads too much into the condition. By leaving the buffer over to a future application, all that is being done is to acknowledge a degree of evaluation. That should not be read as some sort of *ex cathedra* doctrinal rejection of the need for a buffer to the south at all. That would be not just an inference too far but several degrees of inference too far. If anything, this is consistent with the council's position that CDP provision for buffering is not absolutely mechanical and involves some degree of evaluation.

100. All that said, the question here is just whether there needs to be a buffer zone on this particular development site (in the sense of whether there was a CDP contravention by not having provided for such a zone in the permission granted). If not, it doesn't matter whether it needs to be somewhere else or not in the context of some future application. So, formally, my rejection of the Ruden Homes position is perhaps *obiter* in the strictest sense, but any further discussion will have to be based on the premise of that rejection.

101. On that premise, the development plan on an *XJS* interpretation does generally envisage a buffer zone at the interface between LI-X-01 and LI-I-02.

102. There is therefore no legal significance to the inspector quoting the plan without referring to the wording about "to the east" – the logic of the plan also applies at the smaller boundary to the south. The applicant's argument (and to a degree that of Ruden Homes) attempts to read the inspector's report as erroneous when a non-erroneous reading is open, including by making the unpleaded submission that she asked the wrong question.

103. The applicant withdrew the word "bias" that was inappropriately used in the affidavit of Pdraig O'Sullivan (paras. 42 and 43). As now stated in Practice Direction HC 137 at para. 5, subsequent to this affidavit but declaratory of the general position:

"5. ... List participants are reminded of their obligation that care should be taken to establish that there is a sufficient factual and legal basis to make any claim of objective or subjective bias or other misconduct against any person, including a decision-taker, a legal representative or the Court (see *Shatter v. Guerin* [2019] IESC 9, [2021] 2 I.R. 415 at 30 per O'Donnell J. (Dunne, Charleton and O'Malley JJ. concurring))."

104. Such a factual and legal basis was lacking here. Such inappropriate claims come squarely within s. 50B(3) of the 2000 Act. However provisionally, in the circumstances, I am not proposing to rely on that provision. For clarity, that provisional order as to costs does not preclude any contrary application and is not intended to visit any such application (which I am not inviting) with adverse costs if unsuccessful.

105. On the second question, the *XJS* reading of the objective and para. 2.6.50 is that the buffer be created in "the development of this key site" *i.e.*, presumptively within LI-X-01 itself, as opposed to this being a requirement that involves the buffer being necessarily imposed on other surrounding

areas. As the council says, that does not preclude a planning decision-taker from imposing a buffer zone, either wholly or partly, within other areas but it does not *require* that in some sort of fixed mandatory sense (a sense not set out in the objective) – we are in the space of a degree of evaluation with the primary obligation being within LI-X-01 as being “this key site” to which the obligation presumptively attaches by its own terms.

106. The applicant’s interpretation *requiring* the buffer to be within this development site is artificial. That interpretation essentially comes down to the argument that since the text refers to the east, the general terms of the objective must be so construed, with the result not that there is to be no buffer zone, but that the buffer must be imposed on the industrial lands with no express textual support for that and no logic for that, and in contradiction to the approach expressly adopted to the main boundary to the east (bearing in mind that the border to the south is minor in comparison). That latter feature makes it somewhat understandable as to why the text mentioned the east specifically. A homely example – references to “the North” meaning Northern Ireland are generally construed as referring to that region rather than a point of the compass, but Crossmaglen in “Northern” Ireland is 141 km to the south-east of Malin Head. Similarly, here, when the plan referred to land to the east of LI-X-01, it was not excluding the relatively modest amount of industry-zoned land to the south.

107. Ultimately, insofar as the plan envisages a buffer between the industrial lands and residential lands, that does not have the consequence that the buffer absolutely must be located in the industrial lands. The better interpretation of the plan is that in general the buffer should be located in the lands zoned residential (“this key site”), if and when an application is made. That is not absolutely inflexible in the sense that if a buffer zone is already integrated into a particular development in the industrial lands, this may reduce or remove the imperative need for a buffer on the residential side in that particular area. As a general interpretation, this would be clear to a reasonable reader in the *XJS* sense. The council are correct that the plan would not be read as absolutely prescriptive in this regard. Indeed, the very phrasing of the plan objective does not in its terms require a buffer zone – it refers narratively to a buffer zone and thereby envisages a degree of evaluation. The text is a bit more prescriptive (subject to the word “appropriate” which is of course inherently evaluative). The reference to “east” is not definitional but is the primary illustration of the impact of the objective (not defined in terms of compass directions). It’s correct that the objective doesn’t use the term “appropriate”, but that’s in the context where the objective doesn’t purport to set out a mandatory obligation. Objectives and text should be read holistically and consistently where a consistent reading is available, not in a way that searches for conflict as a launching pad for *certiorari*. The upshot is that while the primary and presumptive way in which the plan overall is to be implemented is that the buffer should be within LI-X-01 lands, a planning decision-taker could determine that other arrangements could apply if it was more appropriate for the buffer to be shared or to fall on adjoining lands. The point ultimately is that what happened here (not imposing the buffer within the LI-I-02 lands) was not only not unlawful but in line with the primary and ordinary *XJS* sense of the CDP.

108. To that extent I disagree with the notion proposed by Country Clean that it is (absolutely) mandatory for there to be a buffer within LI-X-01, or as put:

“16. The land use for LI-I-02 is defined as Industrial. The intent of the description in the zoning is to consider the CCR site for its intended use; accordingly, the LI-X01 zoning must account for this and provide a buffer to the CCR site.”

109. However, I do agree with their submission that the plan must be read holistically:

“25. The High Court stated in *Redmond v An Bord Pleanála* [2020] IEHC 151 that the correct interpretation of a development plan is always a logically anterior question to the application of the development plan’s objectives in the assessment of any particular development proposal. The relevant provisions of the Development Plan must be considered in context and not parsed “in an overly technical or legalistic manner” and the Court should adopt a holistic approach in interpreting broad policy statements by considering the documents as a whole, in order to discern the objectives of the planning authority, rather than focusing on individual parts of the plan or policies: see *Navan Co-Ownership v. An Bord Pleanála* [2016] IEHC 181 and *Kelly v. An Bord Pleanála* [2019] IEHC 84.”

110. Subject to adding a reference to the implied requirement of an “appropriate” buffer, being presumptively rather than mandatorily within the residentially zoned lands, I agree with the commission that there was no error in the interpretation of the plan:

“33. The Inspector’s detailed consideration of zoning Objective LI-X-01 and Objective LI-I-02 (and their interaction with each other) is clearly set out in the above analysis. The conclusion the Inspector reaches in this regard is also made by reference to consideration of Objective ZU-18-5. It is evident from this analysis that the Inspector considered that Objective LI-X-01 comprised a requirement to buffer any future residential development on

these lands from both the existing industrial lands to the east and from adjoining lands zoned for industrial use, including the NP site to the south of the Special Policy Area.

34. The Inspector's interpretation of Objective LI-X-01 and Objective LI-I-02 considered in light of Sherwin (§96) principles, namely – 'in its ordinary meaning as it will be understood by members of the public without legal training' – is without error. In this regard, the Applicant appears to read the Inspector's analysis as erroneous where a non-erroneous reading is clearly available: see *Rural Residents [Wind Awareness and Environmental Group & Ors v An Coimisiún Pleanála [2025] IEHC 600]* (§48(iv)); *Donagher McGowan [v An Coimisiún Pleanála [2025] IEHC 405]* (§49(iv))."

111. There is nothing in the plan as a whole or the wording on transitional areas that changes the foregoing. Nor does it follow from the disposition of the LRD application or condition 91 that the buffer zone to the south must be located in industrial lands as a matter of interpretation of the CDP.

112. There is nothing unlawful about how the inspector approached matters. The idea that she could not, in a supplementary report, ask whether there is anything to warrant a change of view from the original report, is an impractical restraint on the freedom of a statutory actor to phrase her documents in the way that seems appropriate to her rather than how hypothetically a judicial review court might (or might not) have phrased matters. The way the report was framed is a completely natural and reasonable way to deal with such a situation and should not be construed as the application of the wrong test. Again, the applicant, perhaps understandably, in pursuit of *certiorari*, strains to read as unlawful that which is perfectly capable of being construed as lawful.

113. Admittedly, by not requiring a buffer zone being in the industrial lands in respect of the site covered by this particular permission, due to permitting development up to the edge of those lands, the commission is creating a situation whereby an "appropriate" buffer zone is likely to be entirely in the residential lands as opposed to partly in each, or entirely in the industrial lands. That does cut down on the options but that isn't unlawful – allowing any development inherently has the potential to preclude or reduce options on adjoining lands. One can't keep one's options open forever – at some point decisions need to be made. It is an unfortunate fact of existence that, as put by John Gardner in *Grendel* (Alfred A. Knopf 1971) at p. 133, "alternatives exclude". The fact that the decision here will have ramifications for future development consent in the residential area does not make it unlawful.

114. As a summary, it would be instructive to go through the points made by the council at this juncture:

- (i) "On Core Ground E1, the Council submits that, when Objective LI-X-01, paragraphs 2.6.49 and 2.6.50 and the wider provisions of the CDP are read together, the landscape and spatial buffer required by Objective LI-X-01 applies where future residential development within LI-X-01 adjoins the LI-I-02 Industry zone." That is correct – the key point being that objective and text should be "read together". That is the appropriate interpretative methodology – not cherry-picking individual clauses to support *certiorari*.
- (ii) "The Council accepts that paragraph 2.6.50 is specifically directed to the established Existing Mixed/General Business/Industrial Uses ('MGBI') interface 'to the east' and that those words must be given full effect, but does not consider that they exhaustively limit the unqualified wording 'adjoining industrial use' in Objective LI-X-01." The reference to MGBI land means the pink lands as opposed to the blue ("industry") lands where the development site is located. Here I differ slightly and would more emphasise the need to "read [the provisions] together" as referenced in the council's first point. The point is that reading this together with the objective does not give rise to a reading that is any different from the essentials of an appropriate buffer applying to the industrial lands to the south as well as those to the east. In one way it doesn't matter which provision (objective, text or both) we rely on to get to that point. I would phrase it as reading both objective and text harmoniously, so I would not see the *XJS* reader as considering that the text is limited strictly to the geographical east, given the context. If the options are (a) read both harmoniously - the buffer applies mainly to the east, but includes the small frontier to the south (b) read the text in the light of the objective, buffering applies mainly to the east but also includes the south or (c) read the objective in the light of the text, all buffering is limited to the strict geographical east, despite the lack of such a limit in the objective and the lack of logic for such a limitation, the *XJS* reader would prefer (a) (and if I am wrong about that, (b)), for the reasons outlined. (We can note here that if I am wrong about that as well, and (c) applies, then there is no buffer at this location so the core ground fails on that basis - that's why I said earlier that this is perhaps technically *obiter*).

- (iii) "The detailed form, width and extent of that buffer are not fixed by the CDP and fall to be addressed through the framework plan and development management process." That is absolutely correct. Indeed, the need for the buffer is not actually phrased as a requirement in the objective, but reading that with the text, the upshot is a need for an "appropriate" buffer, with appropriateness (which could potentially include no buffer if that isn't appropriate in a particular location) to be determined in the development management process.
- (iv) "The express buffering requirement in Objective LI-I-02 is directed to the Cork Harbour Special Protection Area and does not, in terms, prescribe a residential amenity buffer between LI-I-02 and LI-X-01." That is also correct – that requirement has minimal relevance to the need for a buffer at the development site.
- (v) "Separately, development within LI-I-02 remains subject to Objective ZU-18-5, paragraph 18.2.2, paragraph 2.6.24 and Objective LI-GO-06 and must avoid or appropriately mitigate unacceptable effects upon existing or future residential amenity. Objective BE-15-06 is of more limited relevance and does not determine the location or extent of the residential/industrial amenity buffer." Again, this is correct – any complaint about those more general objectives do not get the applicant within the environs of *certiorari*.
- (vi) "The Council therefore differs from the Applicant insofar as Core Ground E1 is advanced on the basis that the relevant buffer must be provided on the LI-I-02/Country Clean lands rather than within LI-X-01, although the Council agrees that the Country Clean proposal is subject to independent mitigation obligations." This is correct. The CDP does not *require* any buffer to be on the LI-I-01 lands although it does not preclude that in the exercise of planning judgement in a given case.
- (vii) "The Council agrees with the Commission and the First Notice Party to the extent that they contend that the LI-X-01 buffer obligation can apply at the interface with LI-I-02, but would qualify that position insofar as it might be understood as placing exclusive responsibility for achieving compatibility on the developer of LI-X-01." The reason this is correct is that the plan objective and text, read together, are not absolutely prescriptive. The reference to a buffer in "this key site", *i.e.*, LI-X-01, puts the buffer presumptively in that parcel, but the reference to an "appropriate" buffer leaves open the possibility for evaluative judgement that this would not be appropriate and that a buffer could be in adjoining parcels.
- (viii) "The Council also does not adopt the First Notice Party's proposition that the zoning history itself categorically determines that all buffering responsibility lies on LI-X-01." As a matter of law, the zoning history is largely irrelevant to interpretation of development plans unless such history is invoked by the text of any given plan itself. As the Ruden Homes parties point out: "as explained in *GOCE v An Bord Pleanála* [2024] IEHC 554 at §16 'it is not appropriate to interpret a development plan by comparing it to an earlier plan'. This reflects the Court's position in *Redmond v An Bord Pleanála* [2020] IEHC 151 §§19-21". However, they push that point beyond its logical boundaries by complaining about para. 4.3.20 of the additional inspector's report, which discusses the zoning history and the 2017 LAP, saying "The above approach to interpreting the CDP is inconsistent with the principles outlined in *GOCE* and *Redmond*." The problem with that is that it reads the report as erroneous and perhaps invalid when a valid reading is available, which is that the inspector is setting out history and context and point out how all of that is consistent with her interpretation of the plan. She is not relying on the history to create the interpretation. The Ruden Homes objection is like saying that a judgment that refers to zoning history is also impliedly relying on that to interpret current zonings. That doesn't follow, and it doesn't follow with respect to the inspector's report either. Not everything a decision-taker says is pivotal *ratio* - that applies to judgments as much as to commission decisions or inspector's reports. Context is also allowed.
- (ix) "The Council differs from Ruden Homes' submission that Objective LI-X-01 is confined to the eastern MGBI interface and from its reliance on the Ruden Homes permission and Condition 91 as establishing that no buffer is required at the southern interface: the permission related only to part of LI-X-01, the direct southern interface with LI-I-02 remained within a future phase, and Condition 91 addressed only the illustrated eastern buffer." This is correct and is addressed above.
- (x) "The Council also notes that the Inspector's quotation of paragraph 2.6.50 omitted the words 'to the east'; its agreement with the substance of the Inspector's ultimate conclusion is based on the full wording of Objective LI-X-01 and paragraphs 2.6.49 and 2.6.50 read in the context of the CDP as a whole." There is no significance to

the omission of the words "to the east" where these do not feature in the objective and where objective and text read together in the light of the context and purpose do not exclude the relatively smaller part of the boundary with industry-zoned lands to the south. There was no error by the inspector. In that regard, Ruden Homes puts this in rather over-emphatic terms, saying for example:

- i. "**Critically**, the Inspector omitted a **fundamental** statement";
- ii. "It is **entirely unclear** why the Inspector omitted that the 'adjoining industrial uses' are clearly identified in the CDP as those 'to the east'";
- iii. "There is **nothing** in the Commission's Order **to demonstrate that the Commission understood** that the CDP clearly identifies the location of the buffer in §2.6.50 of the CDP";
- iv. "**The above errors** by the Inspector and the Commission are also reflected in the Commission's input into the Statement of Case";
- v. "The First Notice Party's written submissions also contain **a similar error** in failing to recognise that the CDP expresses where the industrial uses are"; and
- vi. "This **failure to fully quote** from §2.6.50 of the CDP leads the Notice Party **into error** in its submission at §24". (emphasis added)

The false premise of all the above is the implication that the omission of reference to "east" is tremendously significant legally – that is a misconception for the reasons explained.

- (xi) "Even if the Court were to accept Ruden Homes' narrower construction of the express LI-X-01 buffer, the independent transitional zone and residential amenity obligations applicable to development within LI-I-02 would remain." This does not arise as the "if" is counterfactual.

115. No misinterpretation or lack of regard to Objectives LI-I-02 and/or LI-X-01 and/or ZU-18-5 and/or BE-15-06 in this or any other respect has been made out.

116. The applicant has not discharged the onus of proof to evidentially demonstrate how the commission's decision gave rise to impacts on habitats contrary to the CDP or in a way that was not dealt with in a reasoned way in the AA.

117. The reasons claim is simply a merits-based reformulation of the substantive complaint. The obligation is not to give reasons that would satisfy an applicant (an impossible standard), but to give main reasons on the main issues, which was done here. The fair procedures argument adds nothing of substance. The applicant was not unfairly precluded from making any points they wanted. If the commission's disposition of the matter was lawful, that does not become unlawful due to failure to give the applicant specifically some form of additional procedure beyond established channels of public participation.

118. Ultimately, I would accept the commission's summary of the problems for the applicant:

"20. Having regard to [caselaw identified in submissions], it is the Commission's position that the decision under review was reached lawfully and without error. The decision to grant permission for the reasons and considerations contained in Commission Order – including, inter alia, 'the LI-X-01 zoning objective for the adjoining lands requiring the provision of an appropriate landscape buffer between new residential development and adjoining industrial uses' – comprised a correct interpretation of the CDP and was entirely rational. The Commission conclusion that the development would be in accordance with proper planning and sustainable development, subject to compliance with the conditions imposed, was reached on the basis that the proposed development 'would not seriously injure the amenities of the area or the amenity of the local environment, would not be prejudicial to public health, would not result in adverse significant environmental impacts'.

21. The reasons for the Commission decision are clear, both on the face of the decision itself and when read in light of the totality of the documentation before the Commission, including in particular the Second IR[.]

22. The Applicant's claim comprises an impermissible merits-based challenge to the Commission decision and provides no basis for a grant of certiorari."

EU law issues

Core ground 3 – habitats directive

119. There are two European sites within a 5 km postulated zone of influence:

- (i) The Cork Harbour SPA: <https://www.npws.ie/protected-sites/spa/004030>; and
- (ii) The Great Island Channel SAC: <https://www.npws.ie/protected-sites/sac/001058>.

120. The applicant's AA case is limited to effects on the SPA.

121. Core ground 3 is:

"3. The impugned decision is invalid because An Coimisiún acted contrary to Article 6(2) and or 6(3) of the Habitats Directive as transposed by s.177S-V and Part XAB of the Planning

and Development Act, 2000, as amended, and the case law of the CJEU, by failing to take the appropriate steps to avoid in the Cork Harbour SPA disturbance of the species for which the site has been designated, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive and the Board had an autonomous obligation in this regard. Further particulars are set out in Part 2 below."

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

"Core Ground E3 –

The Applicant submits:

32. The Commission acted irrationally and contrary to Article 6(2) and or 6(3) of the Habitats Directive by failing to apply to this site the requirements of the County Development Plan zoning for this site which stipulated measures to ensure the avoidance of disturbance to Conservation Interest birds namely: 'Appropriate buffering and screening between new development and the SPA will be required. Areas within this site may be used by Special Conservation Interest bird species for which the Cork Harbour SPA is designated. Account will be taken of same when considering new development proposals in this area', in circumstances where the Commission failed to incorporate any better measures, or any measures at all to protect disturbance to the birds from the SPA, whether they be on the European Site or outside of it.

33. In this ground, the Applicant has identified impacts related to absence of buffering and screening for Habitats Directive purposes, including fire risk from the proposed development and the impact of same on air quality and water quality including the by the deposition of air borne contamination and smoke and ash on the water in the SPA or outside the SPA and the impact of noise during construction (including rock breaking) or noise during operation on the SPA. These potential impacts are evident from the nature and scale of the proposed development.

The Commission submits –

34. This ground of challenge comprises a reformulation of the complaints made under both CG1 and CG2 above and a further impermissible merits-based challenge to the Commission's AA conclusions.

35. In the first instance the Commission maintains a pleading objection (SOO, §45) as regards i) the failure to particularise the alleged breach of Articles 6(2) and 6(3) of the Habitats Directive and, ii) the failure to plead either what the alleged disturbance to designated species consists of, or indeed what species are alleged to be impacted.

36. Without prejudice to the Commission's pleading objection, the Commission clearly had regard to and applied the zoning requirements of Objective LI-I-02 within the decision. The Second Inspector's Report expressly considers zoning Objective LI-I-02 in the context of the submissions on the remitted appeal as it applies to the SPA. The Applicant has not demonstrated any irrationality or error in this conclusion by reference to expert evidence or otherwise.

37. The Applicant's subjective view as to what 'impacts related to [sic.] absence of buffering and screening for Habitats Directive purposes' arise under the proposed development does not constitute expert evidence and cannot provide a basis on which to impugn the Commission's AA conclusion.

38. Further, this ground of challenge completely ignores the Commission's AA conclusions in respect of the SPA and fails to by way of clear reasoning to connect the factual allegations with the relief sought. The authorities clearly dictate that an Applicant cannot obtain certiorari by osmosis.

The First Notice Party submits –

39. The First Notice Party adopts the Commission's position in respect of this ground of challenge and adds that the Applicant did not put forward any expert evidence in the process about these concerns leading to the Commission's Decision. The Applicant cannot in these proceedings complain of a failure to provide adequate reasons on this issue in circumstances where this precise concern was not raised in the process."

123. Unfortunately I must uphold the opposing objection that this claim is inadequately pleaded in that it fails to particularise:

- (i) how exactly Articles 6(2) and 6(3) of the habitats directive are breached;
- (ii) what designated species are at issue; and
- (iii) what exactly is the alleged disturbance to the unpleaded designated species.

124. I would therefore uphold the commission's objection under this heading:

"87. The Applicant has refused to engage with the Commission's pleading objection (SOO, §45) in written submissions regarding i) the failure to particularise the alleged breach of Articles 6(2) and 6(3) of the Habitats Directive and, ii) the failure to plead either what the

alleged disturbance to designated species consists of, or indeed what species are alleged to be impacted.

88. The Commission relies on the above submissions made (§68) in respect of pleading requirements *mutatis mutandis* in respect of the pleading objection made under CG3.

89. As regards the first complaint, notwithstanding this objection, the Applicant makes no further attempt to explain how it is said a breach of Articles 6(2) and 6(3) arises in the context of an alleged failure to apply the zoning Objective LI-I-02 (which is denied). The Commission decision clearly applied and had regard to Objective LI-I-02. The Second IR (§§4.6-4.7) expressly considers zoning Objective LI-I-02 in the context of the submissions on the remitted appeal as it applies to the SPA. The Commission also relies on the above submissions (§§34-36) regarding the Inspector's interpretation of Objective LI-I-02 more generally *mutatis mutandis* in respect of this plea."

125. If I am wrong about that, the applicant has not discharged the onus of proof to evidentially establish this point in any event. As the commission points out:

"90. This complaint represents a further impermissible merits based challenge to the Commission's AA conclusions. In this respect, the Inspector's conclusion on AA, accepting and adopting the conclusions of the NIS (§4.7.7) that 'subject to implementation of recommended mitigation measures for both the construction and operational phases of the development, the proposed development alone or in combination with other plans or projects, would not result in adverse effects on the integrity of the European sites.' was also accepted and adopted by the Commission.

91. As already submitted above, the Applicant singularly fails to point to any evidence, expert or otherwise, capable of impugning the Commission decision with respect to its AA conclusions: see Rural Residents (§49(v)), Donagher McGowan (§50(v)), Hession (§61(iv)).

92. Further, assuming such alleged failure to apply the zoning Objective LI-I-02 could be proven by the Applicant, it is not understood or explained how any such failure (which is denied) could give rise to a separate breach of the Habitats Directive."

126. The alleged impacts due to alleged lack of buffering and so forth are assertion and not evidentially demonstrated facts. Nor does the applicant set out any proper pathway between the complaint and an entitlement to relief.

127. As the commission submits: "whereas the Applicant recites various high level principles as set out in various CJEU authorities (Written Submissions, §§63-65), there is ... absolutely no attempt made to apply the same to the facts of the within case by way of demonstrating how it is contended a breach of the Habitats Directive arises." Generalised invocation of EU law principles is not enough – there must be meaning and logic to a specific argument that leads to *certiorari*. That is unfortunately insufficiently discernible here.

128. Insofar as this is a failure-to-have-regard point, no such failure has been established evidentially. Insofar as it is a non-compliance argument, no such non-compliance has been made out evidentially either.

129. If I am wrong about that, the applicant's failure to raise such points in the process, while not preclusive of making the argument, is such as to warrant refusal of relief on discretionary grounds in the circumstances. Country Clean demolishes this entire ground very succinctly:

"43. The Applicant purports to have identified impacts related to absence of buffering and screening for Habitats Directive purposes, including fire risk from the proposed development and the impact of same on air quality and water quality including the by the deposition of air borne contamination and smoke and ash on the water in the SPA or outside the SPA and the impact of noise during construction without any evidence before this Honourable Court demonstrating such potential impacts.

44. In addition, another point the Applicant makes here is that the Commission purportedly failed to provide explicit and detailed reasons capable of dispelling all reasonable scientific doubt in relation to potential effects on Cork harbour SPA. However, the Applicant did not put forward any expert evidence in the process about these concerns leading to the Commission's Decision. The Applicant cannot in these proceedings complain of a failure to provide adequate reasons on this issue in circumstances where this precise concern was not raised in the process. Consequently, this is clearly not a 'main issue'. Nonetheless, for the avoidance of doubt, the Inspector did consider potential effects on Cork Harbour SPA at §9.4 of her report and concluded as follows:

'Given the distance between the proposed development area and the nearest point to the SPA (400 metres downstream), there is no possibility of any direct disturbance of concentrations of birds which could affect the range, timing or intensity of use of areas within the SPA...

...The likelihood of significant adverse effects on the SCIs of Cork Harbour SPA in the absence of mitigation are presented in Table 5.2.5 of the NIS (excluding Common Tern). No suitable

habitat was found to occur for Common Tern, which is confined to coastal habitats. There is no possibility of disturbance of breeding terns as they breed on artificial structures further downstream within the SPA and largely forage in marine waters. This table includes the principal supporting habitats associated with each species and assesses the potential for significant effects and the likely significant impacts for each species. Individual birds including Grey Heron and Cormorant and various gull species are likely to be present occasionally. However, they would occur in low numbers at this location and any temporary disturbance from the area due to construction activities would not have any adverse effect on the SPA population in view of the conservation objectives.”

Core ground 4 – EIA

130. Core ground 4 is:

“4. The impugned decision is invalid and was made contrary to Article 2(1), Article 3 and Article 5 of the EIA Directive as transposed by Part X of the Planning and Development Act, 2000, as amended and the caselaw of the CJEU, because An Coimisiún failed to ensure that, before development consent was given, the proposed development was made subject to an Environmental Impact Assessment, properly or at all, and An Coimisiún erred in failing to properly conduct such an assessment in the manner required by Article 3 of the EIA Directive and failed to ensure that the Developer submitted an Environmental Impact Assessment Report (‘EIAR’) that was compliant with Article 5 and Annex IV of the Directive. Further particulars are set out in Part 2 below.”

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

“Core Ground E4 –

The Applicant submits:

40. Contrary to Article 3(1) of the EIA Directive, the Commission erred in failing to carry out an EIA properly or at all of the expected effects deriving from the vulnerability of the project to fire and fire related explosions and smoke and water damage, on

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).

41. The Inspector erred and led the Commission into error by placing undue weight on the licensing role of the EPA as a measure for mitigating the impact of fire on population and human health, biodiversity, land, soil, water, air and material assets and failed to assess the risk of fire in the context of proper planning and sustainable development.

The Commission submits –

42. It is denied that the Commission erred in failing to carry out an EIA of fire related risks as contended. This complaint is not sustainable by reference to the Inspector’s EIA analysis and conclusions as set out in the First and Second Inspector’s Reports. The Commission decision is required to be read validly, where such a reading is available. Further, this ground comprises an impermissible merits-based challenge to the Commission’s reasoned EIA conclusion absent any expert evidence capable of impugning same.

43. There was no error in the Inspector’s reference to the licensing role of the EPA which is distinct from and in addition to the EIA functions of the Commission in a planning context. The Applicant adopts the most erroneous reading of the Inspector’s reports as possible and further seeks to parse the language of the Inspector’s Reports in the context of both complaints under CG4. This approach is clearly contrary to settled authority.

The First Notice Party submits –

44. The First Notice Party adopts the [Commission’s] position and repeats that the Commission did not the Commission err in failing to carry out an EIA of the expected effects deriving from the vulnerability of the project to fire and fire related explosions and smoke and water damage, as contended nor was there an error in the Inspector’s reference to the licensing role of the EPA which is distinct from and in addition to the EIA functions of the Commission in a planning context.

45. The First Notice Party are not bringing hazardous waste into the site and that the majority of the waste being brought into the facility is not ‘flammable’ when interpreted in the context of the meaning of the definition provided through the Waste Management Act 1996.”

132. The basic reason why this point fails is:

- (i) The applicant reads the first and second reports as contradictory and invalid when they are capable of being read in harmony and valid to the effect that there is limited risk arising from flammable type material. Micro-analysis of wording in search of

contradictions and inadequacies is not appropriate if the documentation can be read holistically and as making sense. As it happens, the Court of Appeal of Northern Ireland recently made a similar point in refusing leave for judicial review of a decision of a statutory commission:

"A determination such as [that under challenge] should not be read hypercritically. As the judge said, the determination of the Commission should not be read as a judgment of the court, it is written by non-lawyers, and it represents their evaluative judgment in respect to multifactorial issues. In our view the reasons for the decision are discernible ..." (*In re MacCionnaith*, Unreported, NI Court of Appeal, 12 October 2026, *per* Keegan LCJ, Colton and McBride LJJ concurring).

- (ii) Merits-based assertion or disagreement does not constitute evidentially establishing a legal infirmity with an EIA.
- (iii) The applicant has failed to discharge the onus of proof in relation to this complaint and fails to engage with the opposing evidence. The complaint is simply not supported by evidence capable of discharging the burden of proof that lies on the applicant.
- (iv) Reference to the EPA's licensing function was permissible and does not constitute abdication or render the EIA unlawful. The fact that emissions licensing is required is an obvious objective feature that will mitigate impacts and regard can be had to this. The postulated analogy with *Usk and District Residents Association Ltd & Ors. v An Bord Pleanála* [2009] IEHC 346, [2010] 2 I.L.R.M. 235, [2010] 4 I.R. 113 does not apply where there is in fact a consideration of relevant impacts (as opposed to a failure to consider impacts for EIA purposes on the incorrect basis that they will be addressed elsewhere).

Reference to the CJEU does not arise

133. In the statement of case parties specified that reference to the CJEU was "N/A".

134. For the avoidance of doubt, I have obviously (and as always when an EU law point is argued) considered any potential relevance of Art. 267 TFEU. But the obligation to refer (even for an apex court) does not apply if a point is *acte clair/ acte éclairé*: judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA*, C-561/19, ECLI:EU:C:2021:799 (Grand Chamber) at para. 33. No point raising real doubt on a properly pleaded issue of EU law, adequately grounded in the evidence, has been identified or otherwise arises here.

Summary

135. In outline summary, without taking from the more specific provisions of the foregoing:

- (i) applying settled law that there is relevance of the extent to which submissions on a given point were made to the decision-taker, which is consistent with the general principle that, apart from autonomous-type obligations, material capable of sustaining the point must have been properly **before the decision-taker** at the relevant time, such as to give rise to a duty to consider it to the facts here, the failure to make certain points in the process is relevant to the grant of relief as a discretionary remedy;
- (ii) applying settled law that applicants are **confined to their pleadings** to the facts here, and that **complex EU law arguments need to be articulated on the pleadings with particular clarity** to the facts here, insofar as the applicant attempted to make unpleaded points, this is impermissible and such points do not warrant consideration;
- (iii) applying settled law that judicial review is concerned with the **legality rather than the merits of the decision** to the facts here, the assessment of the merits of the proposal is a matter for statutory decision-takers, and elements of the challenge are in essence a merits-based disagreement dressed up in legal language;
- (iv) applying settled law that the standard as to reasons can be summarised as an obligation to provide the **main reasons on the main issues** to the facts here, such reasons were provided;
- (v) applying settled law that there is a presumption (the onus to rebut which falls on a judicial review applicant) that **material has been considered** if the decision-taker says so, that onus has not been overcome;
- (vi) applying settled law that an applicant must have discharged the **onus of proof** to establish all facts necessary for relief to the facts here, and that in the context of a challenge to an environmental assessment, the onus of proof to show a defect generally lies on the applicant to the facts here, that onus has not been discharged;

- (vii) applying settled law that it is not appropriate to engage in legalistic **over-parsing** or micro-analysis of decisions, or of legal instruments generally to the facts here, the applicant's micro-specific reading of the development plan is an inappropriate interpretative method, when the plan can legitimately be read holistically;
- (viii) applying settled law that a decision **should not be read as invalid** if a valid reading is reasonably available to the facts here, the development plan and the decision are susceptible to a valid reading;
- (ix) applying settled law that judicial review is a **discretionary remedy** within established doctrinal boundaries to the facts here, discretion should not be exercised in favour of relief in relation to matters not raised in the process.

Order

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

- (i) the proceedings be dismissed;
- (ii) unless any party applies otherwise by the time and in the manner set out below, the foregoing order be perfected forthwith thereafter on the basis of no order as to the costs of all parties (including no order as to any reserved or adjourned costs or costs not otherwise dealt with, having regard, *inter alia*, to O. 103 r. 38(1)(b) and/or (c) RSC);
- (iii) the foregoing proposed order as to costs be subject to contrary written legal submission or any consequential application supported by a written legal submission, such submission to be delivered within 7 days, with replies by other parties within a further 7 days; and
- (iv) the matter be listed at 09:30 on Monday 2 November 2026 to confirm the foregoing.