

**THE HIGH COURT
COMMERCIAL**

[2022] IEHC 395
[2021 No. 958 JR]
[2022 No. 6 COM]

**IN THE MATTER OF SECTION 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT
ACT 2000 AND IN THE MATTER OF THE PLANNING AND DEVELOPMENT (HOUSING) AND
RESIDENTIAL TENANCIES ACT 2016**

BETWEEN

PROTECT EAST MEATH LIMITED

APPLICANT

AND

MEATH COUNTY COUNCIL

RESPONDENT

(II)

JUDGMENT of Humphreys J. delivered on Friday the 1st day of July, 2022

1. The applicant challenges the validity of part of the Meath County Development Plan centring on the zoning on sheet 35A relating to the southern environs of Drogheda. The applicant also seeks declaratory relief in relation to alleged shortcomings in the Strategic Environmental Assessment (SEA) process.
2. I will refer to these proceedings as *Protect East Meath II* to distinguish them from *Protect East Meath I*, the subject of the judgment in *Protect East Meath v. An Bord Pleanála* [2020] IEHC 294, [2020] 6 JIC 1901 (Unreported, High Court, McDonald J., 19th June, 2020). I appreciate that the applicant has launched other proceedings in the meantime, but the foregoing is the only judgment immediately to hand where it is listed first.
3. The general facts in relation to the adoption of the Meath County Development Plan are set out in *Killegland v. Meath County Council* [2022] IEHC 393 (Unreported, High Court, 1st July, 2022) and *McGarrell Reilly v. Meath County Council* [2022] IEHC 394 (Unreported, High Court, 1st July, 2022), which can be incorporated by reference here. I can recapitulate some of the main points and add to them in the specific context of this case as follows.
4. The previous County Development Plan was adopted in December 2012, and came into operation in January 2013.
5. On 19th May, 2014, Variation No. 2 was adopted. Section 3.3 states that “there is presently an excess of residentially zoned land contained in most of the towns and villages in Meath for which Local Area Plans had been prepared.”
6. Volume 5 of the previous Development Plan as amended by Variation No. 2 set out a strategic policy objective “to operate an order of priority for the release of residential lands”.

7. Table 5 showed 19.9 ha required for residential use in the southern environs of Drogheda, but 157.2 ha zoned for residential use, leading to an excess of 139.1 ha. Regard was had to the need for "consistency with sequential approach to urban expansion and contribution to a compact urban form" (p. 383).
8. Nine residential sites in the southern environs of Drogheda were given a rank whereby site 5 was marked first, sites 1, 2 and 9 were given a Phase I* ranking (meaning part of the site) and all other sites were assigned to Phase II. Thus, most of the A2 (new residential) lands in the southern environs of Drogheda were assigned as residential Phase II (post 2019), which was shown in hatched yellow on the maps in the Development Plan.
9. The Development Plan review process commenced in December 2016.
10. The Regional Spatial and Economic Strategy 2019-2031 was adopted by the Eastern and Midland Regional Assembly on 28th June, 2019. That adopts a target figure of population for Drogheda of 50,000 by 2031 (section 4.2). It also includes a regional policy objective RPO 4.11 which requires the preparation of a joint urban area plan for Drogheda to be agreed between Meath and Louth County Councils.
11. The SEA environmental report for the Draft Development Plan was published in December 2019 and the draft plan went on public display on 18th December, 2019. That proposed removing the phasing arrangement for the southern environs of Drogheda and thus releasing all of the hatched yellow lands to become simply A2 new residential. Submissions closed on 6th March, 2020 and a number of relevant submissions were made.
12. The applicant made a submission dated 6th March, 2020 which among other things objected to the lack of assessment of alternatives and the need for monitoring of significant environmental affects including traffic and air quality, particularly in relation to Julianstown. The applicant enclosed a transport impact study by SLR Consulting Ltd. dated February 2020.
13. A number of landowners also supported removal of the phasing for the zoning of their lands.
14. Louth County Council also made a submission the relevant part of which is as follows:

"Managing growth in South Drogheda

The Draft Plan has projected a population increase of 3,300 persons in the Southern Environs of Drogheda by 2026. This equates to a 49% increase in the population of the Southern Environs, which was 6,757 persons in 2016. The total population of Drogheda in 2016 was 40,956 persons. The RSES projects that in 2031 the population of Drogheda will be 50,000. Whilst it is acknowledged that this figure of 50,000 is not a cap on population, it is unclear if the population projection for the Southern Environs in the Draft Plan has taken cognisance of the RSES figure. Clarity should be provided in this regard. The land use zoning map for the Southern Environs of Drogheda in Volume 3 of the Plan included 178 hectares of land zoned

'New Residential'. In the 2009-2015 Local Area Plan for the Southern Environs a significant proportion of these lands were identified as 'Phase 2' and were not available for development.

Louth County Council would have concerns with the quantum of lands zoned for residential use in this location, which appears to be significantly in excess of that required to meet the projected population in the plan period. The rationale for making all these lands available for development and not including a 'strategic reserve' of residential lands is unclear. This is particularly pertinent given the pressure this area is currently under for development, which is evident by the number and scale of Strategic Housing Development proposals in the area.

Section 2.8.1.1 of the Core Strategy in the Draft Plan indicates that Meath County Council will closely monitor development activity in the Southern Environs pending the preparation of the Joint Urban Area Plan. Whilst this is acknowledged, no details have been provided as to how this monitoring would be carried out and how development would be managed in circumstances where the level of development activity would result in a population in excess of that projected.

Given that a timeframe for preparing the Joint Plan has yet to be agreed it is critical that a robust strategy is put in place that manages growth in the area and ensures that the level of development permitted does not undermine the long term growth strategy of the settlement to be agreed as part of the Joint Plan."

15. In addition, the Office of the Planning Regulator (OPR) made a submission on the draft.
16. The Chief Executive then reported on 13th August, 2020 in relation to the submissions. Without setting out the responses in detail, it is worth noting the response to Louth County Council which is as follows:

"It has been considered that the phasing or de-zoning of land in the absence of a joint plan would be premature and as such it is considered that the zonings outlined in the draft Plan are appropriate at this time. As per CS OBJ 3, it is noted that the Planning Authority will ensure the implementation of the Core Strategy and as such this should be sufficient until the joint plan is agreed between Meath County council and Louth County Council. It is also noted that this matter has been considered as part of the response to the OPR (MH-C5-816) as well as EMRA (MH-C5-60)."

17. Motions to amend the plan were proposed by members and reported on by the Chief Executive in October 2020. The members then voted on the various motions and that process gave rise to material amendments which went on display from 31st May to 29th June, 2021.
18. As part of that process the applicant made a submission *via* its solicitors dated 28th June, 2021 demanding retention of the previous phasing and threatening proceedings if that was not done. The applicant's solicitors enclosed a report from Marston Planning Consultancy dated 28th June, 2021.

19. The OPR also made a submission at the material amendment stage.
20. On 12th August, 2021, the Chief Executive reported on the submissions and material amendments and final decisions on those amendments were taken at special meetings of the members on 20th to 22nd September, 2021 with the plan being finally adopted on the latter date.
21. In the adopted plan the relevant map is 35A and all of the previously hatched yellow lands are shown as simply A2 new residential in yellow. The rationale of this is set out at section 2.8.1.11 of the core strategy as follows:

"In recognition of the requirement for a co-ordinated strategy to maximise the growth potential of Drogheda, which is designated as a Regional Growth Centre in the NPF, Regional Policy Objective (RPO) 4.11 in the RSES sets out the requirement for the preparation of a Joint Urban Area Plan for the town between Meath and Louth County Council.

It is acknowledged that any amendments to the land use zoning strategy for the Southern Environs of Drogheda would be premature pending the preparation of this Joint Plan. However, the Council also recognises that Drogheda is one of the principle areas for population and economic growth in the Eastern and Midland Region outside Dublin.

Taking this into account it is important that land use availability is reflective of its position in the settlement hierarchy and its anticipated role in the future growth and development of the Region, which is to act as a regional driver of economic growth. The 'Residential Phase II' designation on the A2 'New Residential' lands in the Southern Environs of Drogheda has, therefore, been removed with these A2 'New Residential' land retained and being made available for development.

This will ensure there is sufficient land available to facilitate population growth and economic development based on its designation as a Regional Growth Centre. As part of the Joint Urban Area Plan process a more detailed examination of the quantum of residential and employment zoned lands, in addition to open space and community infrastructure, will be carried out. Pending the completion of this process the Council will closely monitor development activity in the area."

22. The written statement in Vol. 2 in the chapter on the southern environs of Drogheda identifies the housing need in the period 2020-2027 as 1,631 units of housing allocation in Table 2.12, of which the following is an extract (footnotes omitted):

Household allocation 2020-2027	Potential units to be delivered on infill/brownfield lands	Quantum of land zoned for residential use (ha)	Quantum of land zoned for existing residential use (ha)	Quantum of land zoned for mix of uses (ha)
1,631	0	178.70	118.59	5.00

23. The meaning of this Table is not entirely self-evident. First of all, the column headed “[h]ousehold allocation 2020-2027” does not specify what units the figure is given in, although the council has clarified that the figure of 1,631 means 1,631 units of housing, each having an average occupancy of 2.5 people.
24. The column headed “[q]antum of land zoned for residential use (ha)” refers to 178.70 hectares, but again this heading is not entirely explanatory because this refers to the quantum of land zoned for *new* residential use by contrast with the column zoned for *existing* residential use of 118.59 ha. Essentially the word “new” is missing from the heading of the column. The 118.59 ha is thus referable to zoning A1.
25. The applicant’s expert, Marston Consultants, had previously indicated in submissions that the hatched lands have capacity to develop 6,256 units if developed to 35 units per hectare and 8,043 units if developed at 45 units per hectare. The council did not particularly dispute that methodology, but also noted that, if the median figure of 40 units per hectare was adopted, this would give rise to 7,148 units.
26. On any view the number of units of housing capable of being built on all of the new A2 lands introduced by the current development plan would be significantly in excess of the household allocation for the southern environs of Drogheda of 1,631 units as set out in the core strategy.
27. The council explains this discrepancy by saying that the figure of 1,631 units is a ceiling, and that it is essentially only the *first* 1,631 units consented to that can be built during the lifetime of the plan, and that increasing the zoning simply creates flexibility rather than involves a breach of the core strategy. The applicant calls this a “foot race” to get developments consented, and disputes the legality of this sort of building-site Darwinism, where only the quickest off the mark can make a kill.
28. Following the making of the plan, the Minister issued a notice of intention to make a direction under s. 31 of the Planning and Development Act 2000 on 2nd November, 2021.
29. The plan came into effect on 3rd November, 2021.

30. The draft ministerial direction was put on display on 10th November, 2021. Following a report from the Chief Executive, a final s. 31 direction was issued by the Minister on 28th January, 2022.

Relief sought

31. The relief sought in the statement of grounds is as follows:
- “1. An Order of Certiorari by way of application for judicial review quashing the decision of the Respondent, Meath County Council (the “Council”), on 22nd September 2021 to make and adopt the Meath County Development Plan 2022-2027 (the ‘CDP’) in relation to the zoning of lands for residential use in the Southern Environs of Drogheda.
 2. A Declaration that the Council, in adopting the CDP failed to conduct a valid Strategic Environmental Assessment.
 3. An Order that Section 50B of the Planning and Development Act 2000 as amended, and / or Sections 3 and 4 of the Environment (Miscellaneous Provisions) Act 2011, and / or Article 9 of the Aarhus Convention apply to the present proceedings.
 4. An Order for costs.”
32. Unfortunately, there are a number of problems with the drafting of the reliefs, not to mention the grounds. First of all, this omits a general claim for declaratory relief, which is facilitated by the terms of the practice direction relating to the Commercial Planning and Strategic Infrastructure List even though that did not formally apply at the time leave was sought (the applicant didn’t seek to amend the statement at the point in time when the practice direction did commence to apply). Maybe the applicant considered that such a declaration is only appropriate if seeking leave in that list (or other lists with corresponding practice directions), but that would be an oversimplistic and defensive view that would overlook the rationale for the practice direction, and see it as only a bureaucratic requirement. Seeking such general declaratory relief is a prudent move in any judicial review application.
33. There is also an error in relation to the claim for *certiorari* in that that relief is technically addressed to *documents* rather than unembodied decisions. If the decision is to make a document, then one does not seek *certiorari* of the decision in some abstract, aethereal and unincorporated sense - one seeks it against the actual document. Strictly, the order is that the document be removed for the purposes of being quashed. That is reflected in O. 84, r. 27(2) RSC which provides that “[i]f necessary, the court may order that the person against whom an order of certiorari is to be directed do make a record of the judgement, conviction or decision complained of.” That reinforces the point that *certiorari* is an order against a document, so if an unembodied decision is challenged, the decision-maker is supposed to embody the decision in a document for the purpose of the relief. A decision that is already embodied in a document doesn’t need to be quashed separately from the document, because it has no meaningful ongoing existence having been superseded by the document, and it is

the document that needs to be quashed. Occasionally of course one can find instances in caselaw where this point was overlooked but presumably it wasn't brought to the court's attention in such cases.

34. More unnervingly for the council and indeed if I may say so for the court, the *certiorari* claim does not specify what parts exactly of the plan are to be quashed. It only became apparent to the council during the hearing that the applicant was seeking to quash parts of the core strategy – something the council described as a “nuclear option”. Nor does the applicant particularly trouble itself in the pleadings to identify what it thinks should happen if the plan or any part of it was so quashed, or how any limbo situation thereby created would be dealt with by way of directions, orders or otherwise.
35. Nor did the applicant claim any form of permanent stay on the plan or any part of it or a stay on regard being had to the plan for the purpose of planning applications. I should add that it is not necessary to claim a temporary stay because interlocutory and interim reliefs do not need to be expressly pleaded in a statement of grounds - only the final orders sought.
36. Most unusually, the statement of grounds does not claim further or other relief. The applicant sought to pass this off as a pure technicality, but I do not accept that. It is a claim that is embedded in the history of pleading and that has a distinct meaning, purpose and value, not least as a *tabula in naufragio*.
37. The grounds are also problematic, but I will just mention two key points at this stage. The grounds complained about the SEA statement without sight of that statement on the incorrect assumption that it would be similar to the original SEA report. The grounds expressly anticipate that an application might be made to amend the proceedings, but no such application was made despite the additional information in the final SEA material.
38. The grounds also unfortunately confabulated the provisions of the 2001 regulations dealing with the variation process with those dealing with the adoption process. Thus, most of the statutory references in the grounds relating to the issue of alternatives for SEA assessment purposes are simply incorrect.
39. Problematically for present purposes, the applicant complained that the council had failed to comply with the objective to agree a joint plan with Louth County Council, but that council was not joined as a notice party. I appreciate that sometimes the question of naming notice parties is a fine line, maybe so in relation to Louth here, but I think that where the objection is that the decision-maker failed in a duty to co-operate with another decision-maker, the latter is worthy of serious consideration as a notice party and would have been a presumptively appropriate one here.
40. Even more fundamentally, none of the owners of the lands who benefitted from the zoning which the applicant sought to overturn were joined as notice parties. That raises a mandatory service issue that goes well beyond merely not applying best practice. While I can park some

of the pleading problems for the time being, the question of the applicant's failures in relation to service need to be addressed at this point.

The applicant's non-compliance with O. 84, r. 22(2) RSC

41. Order 84, r. 22(2) RSC as amended by S.I. No. 345 of 2015 states as follows: "[t]he notice of motion or summons must be served on all persons directly affected."
42. As to whether a landowner is a proper notice party to a challenge to the zoning of her lands, it seems to me that she clearly is. While the language in the caselaw varies between that of "interested party" and a person with a "vital interest in the outcome of the matter" as discussed in *Delaney and McGrath, Delaney and McGrath on Civil Procedure*, 4th ed. (Dublin, Round Hall, 2018), particularly at paras. 31-172 to 31-174, it seems to me that the statutory language involves setting the bar somewhere in between, that is the person who is directly affected.
43. Where a challenge is made to a zoning of specific lands, the specific landowner is in my view clearly directly affected. Where the challenge is to a broad class making it impracticable to serve individual owners that point does not apply, but that is not the case here. I would agree with the learned authors of *Delaney and McGrath on Civil Procedure* at para. 31-164, p. 1318, that "[a]n application for judicial review will often affect the rights and interests of persons other than those against whom relief is sought. Natural justice requires that such persons should be notified of the proceedings because they may wish to intervene in support of the impugned decision or, perhaps, in support of the applicant."
44. There is a distinction between the *certiorari* claim and the declaratory claim. As regards *certiorari*, the applicant is seeking to quash the zoning of the discrete set of lands in nine parcels, involving fourteen owners, at least one of whom is unknown. The owners are a finite set of persons rather than a huge class where it would be impracticable to give individual notice. Three of the landowners made submissions at the draft plan stage in support of the change in zoning, specifically Shannon Homes, Boyne Fruit Farms and the Farrelly family. The applicant has not served the notice of motion on any of those landowners, so if *certiorari* were to be granted their position would be directly and adversely affected without any form of notice.
45. The court must try and do its best to ensure justice, including fair procedures, not just for the parties before the court, but also for parties not before the court insofar as the law permits that. Courts generally are so habituated into the adversarial system that they are not always that great at doing the latter.
46. It seems to me it would not comply with fair procedures to consider any form of *certiorari*-type relief in respect of these lands without notice to the landowners.
47. The learned authors of *Delaney and McGrath on Civil Procedure* made the point that if the court is of opinion that the person who should have been served, has not been served, it would

be common to join that person as a notice party (para. 31–169, p. 1319), but that is “generally ... at the leave stage” (p. 1319, n. 412).

48. The learned authors make a footnote reference to *Smith v. Minister for the Marine* [1998] IEHC 97, [1999] 1 I.L.R.M. 81, where Geoghegan J. considered joining a notice party for submissions after the hearing but before making an order. It is clear from that case (at para. 14) that the reason Geoghegan J. did not join the notice party was because “[t]here would have been no obligation on the Minister to hear representations” from that party, which implies that joining the party to that particular challenge was not required by fair procedures. There is no analogy with the present case.
49. I made the point in *Barry v. Garda Commissioner* [2020] IEHC 307, [2020] 6 JIC 0806 (Unreported, High Court, 8th June, 2020), that O. 84, r. 22(2) is mandatory and an order made in breach of those provisions (even a consent order) could be set aside on the application of an affected person who should have been served, but was not.
50. None of this affects the SEA declaration if only because that deals with the plan as a whole rather than some discrete class of persons that could practicably be notified.
51. The only options as regards the *certiorari* claim for dealing with this problem at this stage are as follows:
 - (i). To ignore the problem and proceed with a decision on whether to grant *certiorari* anyway, but that does not seem very appropriate having regard to the rights of the landowners concerned.
 - (ii). To consider a declaration on the issues rather than *certiorari* (assuming we could overcome the problem that no such declaration is sought) - but does not seem to me to be appropriate because it would have the same effect. The court would be opining on the legality of matters relating to a discrete class of landowners without giving them notice. That would not really be worth the paper it was written on because if the decision was adverse, such landowners could always come back in to court at a later point and claim the decision was wrong.
 - (iii). To make a decision on *certiorari* on a provisional basis and, if relief is indicated, to then invite the landowners to come back as to argue why it’s wrong. The council suggested that as a possibility, but it does not seem to me likely to be viewed as very fair by any such interested parties. Natural justice requires that one gets the chance to make one’s point *before* the decision, not by way of an attempt to overturn it after the event.
 - (iv). To adjourn the matter in order to put the interested parties on notice.
 - (v). To dismiss the proceedings for non-compliance with O. 84, r. 22(2) RSC.

52. Having regard to the foregoing, the only real choice was between dismissing the proceedings or adjourning them, and after discussion with the parties I made an order on 21st June, 2022, without objection, adjourning the matter and directing the applicant to put the required parties on notice, including Louth County Council, for the purposes of reviewing the matter at that point. I can, therefore, park any further discussion of the *certiorari* claim for the purposes of the present judgment and move on to the claim for declaratory relief regarding SEA.

Core ground 3 – SEA and taking submissions into account

53. Core ground 3 states as follows:

“The Council acted in breach of Article 13(H)(b) of the S.I. No. 436/2004 - Planning and Development (Strategic Environmental Assessment) Regulations 2004 and/or Article 6(4) of the SEA Directive, in failing to take account of an expert report on traffic impacts which was commissioned by and attached with the Applicants’ submission on the purported Strategic Environmental Assessment which was being conducted by the Council. The Council further failed to give any or any adequate reasons or response in respect of the Applicant’s submission and/or the Council’s Chief Executive Report failed to comply with section 12(4)(b)(iii) of the Planning and Development Act 2000.”

The law relating to SEA and taking submissions into account

54. The law in relation to SEA generally has been dealt with in *McGarrell Reilly*, and the law in relation to taking submissions into account has been dealt with in *Killegland*. Those discussions can be incorporated here by reference.

Application of the law to the facts

55. By way of reminder as to the key facts on SEA as set out in *Killegland*, the environmental report for the purposes of reg. 13C of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), was published on 6th December, 2019.
56. The adopted plan was followed by an SEA statement for the purposes of reg. 13I dated November 2021 and an SEA environmental report which describes itself as Vol. 2 together with an SEA non-technical summary as Vol 1. The environmental report of November 2021 is essentially a non-statutory document updating the 2019 report and supplementing the SEA statement.
57. Insofar as the applicant complains about various failures related to lack of taking on board its submissions, it seems to me that it makes the classic error of confusing lack of narrative discussion with failure to have regard to something. There is no obligation to have regard to an applicant’s submissions in the sort of discursive hand-to-hand, point-by-point sense that the applicant is effectively complaining about here, as distinct from the obligation to give the main reasons on the main issues. There is no basis for any particular heightened obligation to give reasons in this particular context. The applicant’s submission is referred to and responded to in the Chief Executive’s report of August 2020, and that constitutes sufficient compliance with the legal requirements on the facts here.

58. While the applicant did not have sight of the SEA statement of November 2021 when filing the statement of grounds, it is clear from that that some of the applicant's points regarding monitoring have been taken into account in the final approach to the monitoring issue.
59. There is an overall contextual issue that dilutes the significance of the applicant's SEA argument, which is that the applicant is really at cross-purposes from the council because it assumes that the full quantity of rezoned lands is going to be developed during the lifetime of the plan, whereas the council's position is that a cap will apply so that not all of the traffic impacts being predicted are going to happen.
60. Overall no breach relating to considering submissions in the SEA context has been made out.

Core ground 4 – SEA and assessment of alternatives

61. The full text of core ground 4 and the sub-grounds is set out in more detail below.

Law in relation to SEA and assessment of alternatives

62. The law in relation to SEA and assessment of alternatives is set out generally in *McGarrell Reilly* and that discussion can be incorporated by reference here.

Application of the law to the facts

63. Core ground 4 states as follows:

"The impugned decision is invalid as the Council failed to consider adequately, or at all, reasonable alternatives for the purposes of the Article 13(E)(1), Schedule 2B and 13(H) of the Planning and Development Regulations 2001 (as amended) as required by Articles 5 and 9(1) of the Strategic Environmental Assessment Directive (2001/42/EC), further particulars of which are set out at Part 2 below. In addition the Council failed to consider or make provision adequately, or at all, monitoring for the purposes of the Article 13J of the Planning and Development Regulations 2001 (as amended) as required by Article 10 of the Strategic Environmental Assessment Directive (2001/42/EC), further particulars of which are set out at Part 2 below."

64. The more particular sub-clauses set out below will provide a convenient way to address this claim.

65. Sub-ground 36 states as follows:

"By way of further particulars of the claim, Article 3 of the SEA Directive requires an environmental assessment of certain plans and programmes. Article 4 of the SEA Directive requires that assessment (or SEA) to be carried out during the preparation of a plan or programme and before its adoption."

66. That is merely legal context, not a ground.

67. Sub-ground 37 states as follows:

"Article 5 of the SEA Directive requires preparation of an environmental report be prepared "in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated"."

68. That again is merely legal context.

69. The sub-ground goes on to say:

"The same is transposed at articles 13L and 13N of the Planning Regulations. The Council prepared the SEA Environmental Report to comply with this requirement."

70. That involves an unfortunate erroneous confabulation of the provisions of the 2001 regulations dealing with variation and those dealing with the adoption of the Development Plan. Regulations 13L and 13N relate to variations, not to the Development Plan itself, and neither of them apply here.

71. Sub-ground 38 provides as follows:

"Article 6 of the SEA Directive provides an opportunity for the public to express their opinion on these matters. Under Article 8, these opinions must be "taken into account during the preparation of the plan or programme and before its adoption". The former is transposed at section 13(3)(c) of the Planning Acts. The latter is transposed at article 13P of the Planning Regulations."

72. It is possibly worth mentioning in passing that there is no such thing as s. 13(3)(c) of "the Planning Acts". Presumably what is meant is s. 13 of the 2000 Act. One should not refer to a single section of a collective citation of Acts. I appreciate that that seems to be standard practice in policing documents and evidence, although one suspects that such a usage might be driven by defensive anxieties of being caught out by omitting some later Act from evidence in the context of some kind of meritless elephant trap set by a technical cross-examination. So the inaccuracy is forgivable in the "police court" context (on the basis of a sort of Gresham's Law of legal points), but should be avoided elsewhere.

73. It is also worth noting that reg. 13P relates to variations of the plan not to the adoption of the plan itself and so is irrelevant to the present case. Either way, this ground is not a legal ground it only provides (erroneous) context.

74. Sub-ground 39 states as follows:

"Article 9 of the SEA Directive requires a statement summarising how environmental considerations have been integrated into the plan or programme and "the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with". The same is transposed at article 13Q of the Planning Regulations. The Council prepared the SEA Statement to comply with this requirement."

75. Again, this involves a confusion of the legal context. Regulation 13Q deals with variations.

76. Sub-ground 40 states as follows:

"The consultants engaged by the Council completed an SEA Environmental Report. This identified a number of alternatives that were considered by the Council to constitute reasonable alternatives (Chapter 7). They identified (§7.3) three broad strategic choices that were regarded as reasonable".

77. That is merely a statement of fact, not a legal ground.

78. Sub-ground 41 states as follows:

"Each of these alternatives was subject to a brief description and assessment, with forecast results identified in a number of bullet points. Each of the alternatives was assessed in a matrix (Table 7.3) with either a positive or negative identified. Alternative 3 had the greatest number of positive scores and was selected as the preferred scenario (§7.4). The preferred option was then subject to detailed assessment in Chapter 8 and Appendix A8.1-A8.3."

79. Again, that is just a statement of fact and not a legal ground.

80. Sub-grounds 42 and 43 provide as follows:

"42. It is the Applicant's case that the Council failed to consider adequately or at all reasonable alternatives for the purposes of Article 13 of the Regulations. As identified by the European Commission Implementation Guidelines for the Directive (2003) (at §5.12) the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives and the alternatives must be identified, described and evaluated in a comparable way. The requirements in Article 5(2) and Annex I concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. This is reflected in the Irish Guidelines published by the Department of the Environment, Heritage and Local Government "Implementation of the SEA Directive" (November 2004). There has not, to the Applicant's knowledge, been a decision of this Court or the Court of Justice on the level of detail that is required in the consideration of alternatives.

43. The issue has been extensively ventilated in the United Kingdom. In *Save Historic Newmarket v Forest Heath District Council* [2011] EWHC 606 and *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 the UK Courts required equivalence between the reasonable alternatives and the preferred option. It is the Applicant's case that the consideration of alternatives and the selection of the preferred Options satisfy none of these requirements. The preferred was subject to very extensive assessment whereas each of the non-selected Options was subject to only a cursory assessment of a few short paragraphs. This is incompatible with the requirements of the Directive, as repeatedly identified in the United Kingdom and in the Guidance of the Commission. The Applicant notes that this argument was rejected by Barr J. in *Friends of the Irish Environment v Government of Ireland*

[2020] IEHC 225, although that decision is currently under appeal to the Court of Appeal and judgement is awaited.”

81. What is notable about these two grounds is that they make no complaint about which alternatives were selected. The complaint is not that these alternatives shouldn't have been considered, but that they should have been considered in greater depth, equal to the preferred approach. So any comment on the selection of alternatives is *obiter*, but it's hard not to point out the following, purely in passing.
82. In terms of the broad approach to development in County Meath, one might suspect that one could make a plausible argument that the two rejected scenarios put up on behalf of the council by their consultants were virtually designed to fail and were never going to be seriously considered, let alone adopted, by the council. On such a view, this is the sort of presentational strategy which is relatively easy to engage in for the purposes of exercises like regulatory impact statements and similar sorts of documents which can be drafted to demonstrate that virtually any policy proposal is the golden mean between two undesirable extremes.
83. The first alternative is:

“7.3.1 Alternatives Scenario 1: Demand-led Growth (County-wide - Urban & Rural) This scenario is one which places limited restrictions on development throughout county. The development of critical mass in certain locations is not taken into consideration and no specific targets or limitations on growth are set in the settlement or core strategies of the Draft Plan. This strategy would still require careful consideration of the environmental impacts of development, either individually or cumulatively.”
84. But it's not immediately easy to see how this could ever have got off the ground having regard to national and regional policies, or basic planning principles.
85. The second alternative is:

“7.3.2 Alternatives Scenario 2: Centred Development Strategy (Settlements) The second alternative 'Centred Development Strategy' comprises a strong yet flexible approach to development, with development focused equally on all settlements supported by strongly protected rural areas. This alternative would be based around the planned growth and a sustainable settlement structure based on the Core Strategy which creates equal development opportunity across all settlements in the county. In this scenario the council would facilitate development equally in all settlements in the county irrespective of their hierarchy or their current absorption capacity. Strong protection would be afforded to the rural environment preventing further rural housing. This development scenario would have negative impacts on the viability of smaller settlements and rural areas within Meath. Such areas would experience a decline in population and as a consequence rural based enterprise would be affected.”
86. Again, it seems open to question as to whether the council could consider it “realistic” to disregard the hierarchical principles arising from the regional and national policies.

87. The rejected scenarios are not immediately identifiable as ones adopted or plausibly likely to be adopted anywhere else, and do not immediately strike one as the sort of realistic alternatives assessment of which is required by the directive. Indeed the European Commission's warnings about putting up unrealistic alternatives seem potentially to be particularly appropriate. Paragraph 5.14 of the European Commission's document *Implementation of directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment* includes the comment that "[a] deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph." On one view, that could have been written for the two rejected options here. But as mentioned above, no such point was pleaded by the applicant, so any settled view would have to await a case where such a point was properly raised.
88. A related point, also not pleaded, was there was no discussion of the alternatives in relation to the settlement strategy and the southern environs of Drogheda. A number of realistic possibilities of alternative approaches could have applied there, most obviously retaining an approach along the lines of the pre-existing phasing approach. The council did not assess any of those alternatives for SEA purposes, but again I don't need to express any view on that in view of the very limited nature of the complaints actually made by the applicant on its pleadings.
89. As regards the point that *is* pleaded, the Court of Appeal has already answered that in *Friends of the Irish Environment v. Government of Ireland* [2021] IECA 317, [2021] 11 JIC 2603 (Unreported, Court of Appeal, Costello J. (Haughton and Murray JJ. concurring), 26th November, 2021), having for good measure considered the relevant English caselaw. At para. 209 Costello J. says that the treatment of alternatives is something that "amounts to comparable assessment of the preferred option and the reasonable alternatives" in that case. That seems to accept the need for comparable assessment, but in terms of implementation of that, it regards the comparison approach that was adopted there as being sufficient.
90. A similar exercise was engaged in here where a table and analysis was prepared looking at the options under various similar headings. Costello J. went on to accept that the preferred option can then be given more detailed consideration (para. 210), which is what happened here as well. It follows from *Friends of the Irish Environment* that the approach taken in this case also passes muster. I do not see any obvious reason why it is necessary, appropriate or even possible to distinguish or revisit that in any way on the basis of the materials or arguments put forward in the present case.
91. Sub-ground 44 states as follows:
- "In addition, the impugned decision of the Council is invalid as it failed to consider or make provision adequately, or at all, monitoring for the purposes of the Article 13J of the Planning and Development Regulations 2001 (as amended) as required by Article 10 of the Strategic Environmental Assessment Directive (2001/42/EC)."

92. That is not advanced in any sense not better addressed below.

93. Sub-ground 45 states as follows:

“Regulation 13J of the Regulations require the Council to “monitor the significant environmental effects of implementation of the plan or programme, or modification to a plan or programme in order, inter alia, to identify at an early stage unforeseen adverse effects and to be able to undertake appropriate remedial action and, for this purpose, existing monitoring arrangements may be used, if appropriate, with a view to avoiding duplication of monitoring”. The Applicant specifically raised the inadequacy of the monitoring programme in its submission on the Draft CDP.”

94. That is a statement of context, not a legal ground.

95. Sub-grounds 46 and 47 state as follows:

“46. It is the Applicant’s case that the CDP includes no adequate provision for monitoring of the significant environmental effects of the implementation of the CDP and therefore contains no or no adequate provision for the identification at an early stage of unforeseen adverse effects or appropriate remedial action. This issue is addressed at Chapter 10 of the Report identifies the obligation to carry out monitoring and simply states that (§10.3) the Council will implement a monitoring programme but without giving any details of how this monitoring will occur, who will do it, when it will be done, how the monitoring will be used and how any identified unforeseen adverse environmental effects will be addressed other than to refer to monitoring on a ‘grant of permission basis’.

47. It is the Applicant’s case that the monitoring programme does not discharge the Councils obligations under section 13J of the Regulations. It is further the Applicant’s case that the monitoring effort identified at Table 10.1 of the SEA Environmental Report contains no actual monitoring of the significant environmental effects of the implementation of the CDP. Most of what Table 10.1 identifies as indicators for monitoring significant environmental effects do not in fact measure environmental effects at all. For example, in relation to Biodiversity one of the targets is “Protect SPAs, Annex I bird species, and regularly occurring migratory bird species and their habitats, and avoid pollution or deterioration of important bird habitats outside SPAs.” The Indicator is “Number of rare and threatened species” and the monitoring is “Initial monitoring to commence within two years of adoption as part of the Chief Executive’s Report on progress (subject to available resources).” In relation to climate one of the targets is “Promote minimisation of greenhouse gas (GHG) emissions to the atmosphere.” The relevant indicators are “Reduction in GHG emissions/Rates of energy / renewable energy consumption” with the same provision for monitoring as quoted previously.”

96. In the light of the Court of Appeal judgment in *Friends of the Irish Environment*, I do not see how the council’s analysis here fails to satisfy the requirements set out in that case. Again,

the applicant has not established a basis to distinguish or revisit *Friends of the Irish Environment*.

97. Sub-ground 48 states as follows:

"None of the targets in Table 10.1 are designed to measure or relate to the anticipated likely significant environmental effects of the implementation of the CDP. There is no explanation how these indicators are to be measured, how reductions are to be achieved and who is supposed to verify progress in relation to those indicators or what effect any monitoring (even if it does occur) will have to mitigate or ameliorate those effects."

98. That is a description of the report and not a legal ground.

99. Sub-ground 49 states as follows:

"It is the Applicant's case that the monitoring contained in the Report is not monitoring or adequate monitoring for the purpose of section 13J of the Regulations and/or Article 10 of the SEA Directive. There is no provision for actual monitoring by an identified body or bodies in order to identify, at the earliest possible stage, unanticipated environmental effects of the implementation of the CDP or to consider remedial action or any other use of the monitoring results."

100. That is somewhat repetitious, but again is covered by *Friends of the Irish Environment*.

101. Sub-ground 50 states as follows:

"As of the date of these proceedings being instituted the final Strategic Environmental Report was not available from the Council's website. The Applicant does not understand that this Report has significantly or materially changed in from the Report referred to above. The Applicant reserves its rights to seek to amend its Statement of Grounds once the final Report becomes available."

102. That is a purported statement of the applicant's position and not a legal ground.

103. Overall para. 50 really highlights the point that the pleading in relation to monitoring was drafted prior to access to the final SEA statement and environmental report. Given that the final report dealt extensively with monitoring, one can say that the applicant's pleadings are based on something of a false premise. Overall, there is simply no basis for *certiorari* in terms of core ground 4 or any of its sub-grounds.

Order

104. The order made on 21st June, 2022 was:

- (i). to give the council liberty to file an affidavit formally putting in evidence Louth County Council's submission and the Chief Executive's report on that submission;

- (ii). to direct the applicant to serve the notice of motion on Louth County Council within two weeks with a covering letter explaining why they are being served and informing them of the mention date;
 - (iii). to direct service of the notice of motion and a cover letter with a link to the pleadings on the relevant landowners insofar as their addresses can be ascertained and to inform them of the return date, such service to be effected within two weeks and noting that the council is to provide such contact details as they have by close of business on 22nd June, 2022;
 - (iv). that there be an order of substituted service for any affected property owners whose addresses are not known, that to be effected by a suitable newspaper advertisement in a newspaper circulating in the locality, setting out the text of the notice of motion and stating that it is listed on 18th July, 2022 again to be published within two weeks; and
 - (v). that the *certiorari* claim be adjourned to 18th July, 2022 for mention.
105. It might be worth mentioning at this juncture that, particularly in the event that the notification of any affected parties proves likely to give rise to a delay in finalising the proceedings, it may become necessary to have regard to whether some form of interlocutory order should be considered preventing any step that would fundamentally prejudice the purpose of the proceedings or that would render them fully or substantially moot. That may be totally hypothetical, but it is perhaps worth noting for potential consideration.
106. The additional order I am now making is that the claim for relief 2 be dismissed.