AN CHÚIRT UACHTARACH

THE SUPREME COURT

S: AP:IE: 2023/0017

[2023] IESC 40

O'Donnell C.J.
Charleton J.
O'Malley J.
Baker J.
Woulfe J.
Hogan J.
Donnelly J.

IN THE MATTER OF AN APPLICATION PURUSANT TO SECTIONS 50, 50A, AND 50B OF THE PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

Between/

McGARRELL REILLY HOMES LIMITED AND

ALCOVE IRELAND EIGHT LIMITED

Applicants/Appellants

AND

MEATH COUNTY COUNCIL

Respondents

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 21st. day of December 2023

Part I - Introduction

Background

1. In September 2021, Meath County Council ("the Council") adopted a new development plan, the Meath County Development Plan 2021-2027 ("the 2021 Development Plan"). The apparent effect of this decision was to change the land-use zoning of certain lands owned by the appellant companies at Kilcock ("the Kilcock lands") and two sites at Stamullen ("the Stamullen lands") and actually to change the zoning of one site at Stamullen. The appellants ("McGarrell") now challenge the validity of this decision on several grounds. This appeal raises somewhat similar – albeit far from identical – issues to the parallel appeal heard sequentially with this appeal, *Killegland Estates Ltd. v. Meath County Council* [2023] IESC 39.

2. Both cases raise similar questions regarding the obligation of the Council, first, to provide reasons in respect of such decisions and, second, to ensure that these reasons comply with certain specific and particular requirements of Planning and Development Act 2000 (As amended) ("the 2000 Act"). Given the overlap in issues, this judgment should ideally be read in conjunction with the judgment which I have just delivered in *Killegland Estates* and to which judgment I will have occasion to cross-refer from time to time. There is, however, one important issue which is specific to this case, namely, can a Council commit itself to reserving certain lands for residential purposes beyond the lifetime of the existing development plan?

3. The Kilcock lands comprise a 27.6 ha site at Kilcock. This was previously zoned A2 New Residential Post-2019 under the earlier Meath County Development Plan 2013-2019. This site is now zoned A2 Residential (Phase II) Post-2027 under the 2021 Development Plan.

4. The Stamullen lands comprise a 3.44 ha. site (known as Crowe's lands); a 5.26 ha. site (known as the Silverstream lands) and 9.39 ha. site (known as Haran's lands). Crowe's lands were previously zoned A2 Residential Post-2019 but are now zoned G1 Community Infrastructure. The Silverstream lands were previously zoned A2 Residential Post-2019 but are now zoned RA Rural Lands. The Haran's lands were previously zoned A2 Residential Post-2019 but are now zoned E3 Warehouse and Distribution.

5. It is not disputed but that in all four cases the earlier zoning had been for *future* residential purposes under the previous development plan. This came about as a result of what was known as Variation No. 2, an amendment to that development plan made on 19th May 2014. Section 3.3 of the Introduction and Explanatory Document in respect of Variation No. 2 stated:

> "…the inclusion of lands in Phase II which is indicated as being required beyond the life of the present County Development Plan, i.e., post 2019, does infer a prior commitment on the part of Meath County Council regarding their future zoning for residential or employment purposes during the review of the present plan and preparation of a new County Development Plan expected to occur during the 2017-2019 period…"

6. I might observe at this point that, contrary to what Humphreys J. appears to have suggested (at paragraph 36) in his judgment in the High Court, Variation No. 2 should not be regarded as being some kind of private contractual commitment between the parties. It was rather a public, open commitment given by the Council in the context of an amended development plan. As I have just indicated, a key question for the purposes of this appeal is whether the

Council was legally entitled to give such a future commitment. Even if it was not, there is the further issue of whether the Council was required to explain its change in policy and whether the reasons actually given were sufficient.

7. In passing, it may be noted for completeness that s. 11D of the 2000 Act (as inserted by s. 3 of the Planning and Development (Amendment) Act 2021) permitted local authorities to extend the duration of existing development plans for up to one further year due to the exigency of the Covid-19 pandemic. In the result the new development plan for Co. Meath now extends from 2021-2027, but nothing turns on this.

8. McGarrell expressly accept that these lands were not available for housing during the lifetime of the previous Development Plan for the reasons set out by McDonald J. in *Highlands Residents Association v. An Bord Pleanála* [2022] IEHC 622. It nonetheless points to the fact that these lands were *reserved* by express Council designation in Variation No. 2 for future housing development *beyond* the lifetime of the pre-existing plan.

9. It is perhaps sufficient to state at this juncture that the principal reason for Variation No. 2 was the oversupply of existing zoned land for development within the county of Meath. As McDonald J. explained (at paragraph 41) of his judgment in *Highlands Residents Association* it was clear from the terms of paragraph 3.3 of the 2013-2019 Development Plan that "the purpose of variation No. 2 was to present a strategy to deal with the excess of residentially zoned land as identified in Table 2.4 [of the 2013-2019 Development Plan]" Variation No. 2 sought to achieve this by ensuring that only the quantity of land required to meet household projections for each region of the county as set out in Table 2.4,

10. It is also accepted that McGarrell have in fact expended considerable monies on these lands for general infrastructural purposes. In the case of the Kilcock lands, McGarrell obtained planning permission to build and construct a distributor road which would support later

residential development. It would seem that at least some of this expenditure was in anticipation of future later development.

11. On the 18th December 2019 the Council published the new draft Development Plan. This proposed the de-zoning/re-zoning of the four sites in question. In March 2020, McGarrell made submissions through its plannings consultants, McCutcheon Halley, in respect of its four sites. The Office of the Planning Regulator ("OPR") also made a submission on the draft Development Plan, including on the need for what was described as a "tiered" approach to zoning in line with the national policy objectives contained in the National Planning Framework.

12. In August 2020 the Chief Executive of the Council prepared a response to the various submissions received (including those from McGarrell and the OPR) and concluded that no further change to the proposed zoning was recommended. On 29th June 2021 the OPR made a further submission, recommending the inclusion of a tiered approach to zoning as a specific objective of the new Development Plan. On 22nd September 2021, the forty elected members of the Council adopted the new Development Plan which included the re-zoning/de-zoning of the four sites in the manner just described. The present judicial review proceedings challenging the validity of this decision were then commenced in November 2021.

Part II – The judgment of the High Court

The judgment of the High Court

13. In the High Court Humphreys J. rejected this challenge to the validity of the de-zoning of McGarrell's lands in a judgment delivered on 1 September 2022: see *McGarrell Reilly Homes Ltd. v. Meath County Council (No.1)* [2022] IEHC 394. In this respect Humphreys J. adopted and adapted the reasoning found in his judgment in *Killegland Estates Ltd. v. Meath County Council* [2022] IEHC 393. A certificate of leave to appeal to the Court of

Appeal was sought by both losing parties pursuant to s. 50A of the Planning and Development Act 2000 ("the 2000 Act") and this was refused by the High Court in a joint judgment delivered in respect of the applications for leave in both cases on the 9th December 2022: see [2022] IEHC 683. This Court granted leave to appeal to McGarrell pursuant to Article 34.5.4º of the Constitution by a Determination dated 28th March 2023: see [2023] IESCDET 36.

14. In his judgment Humphreys J. accepted that the obligation to ensure that the Development Plan "was consistent with the national…objectives specified in the National Planning Framework" ("NPF") as per s. 11(1A), s. 12(11) and s. 12(18) of the 2000 Act was a more onerous obligation that other often-used statutory formulae such as the frequently imposed obligation requiring the decision-maker to "have regard to" certain matters.

15. Section 10(1) of the 2000 Act provides:

> **"**(1) A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question.
>
> (1A) The written statement referred to in *subsection (1)* shall include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under *subsection (1)* of *section 28*."

16. Section 11(1A) of the 2000 Act clearly envisaged that the development plan would follow the NPF and the relevant regional spatial and economic strategy ("RSES"). Section 11(1A) of the 2000 Act provides that:

> "The review of the existing development plan and preparation of a new development plan under this section by the planning authority shall be strategic in nature for the purposes of developing –
>
> (a) the objectives and policies to deliver an overall strategy for the proper planning and development of the area of the development plan, and
>
> (b) the core strategy,
>
> and shall take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government."

17. As Humphreys J. pointed out in his judgment in *Killegland* (at paragraph 132) the phrase "statutory obligations" is contained in s. 11(1)(a). The phrase is, however, defined in s. 12. Section 12(11) first provides that in making a development plan:

> "…the members shall be restricted to considering then proper planning and development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government."

18. Section 12(18) then defines these obligations as including an obligation to ensure that the development plan is consistent with:

> "(a) the national and regional development objectives specified in –
>
> (i) The National Planning Framework, and
>
> (ii) The regional spatial and economic strategy, and

(b) Specific planning policy requirements specified in guidelines under subsection 1 of section 28."

19. Consistency with the NPF was thus a statutory obligation. While the NPF frequently spoke of objectives in relation to "zoned land", Humphreys J. concluded that — as he had done in the companion *Killegland* case (at paragraph 154 of that judgment) — in its context this reference to zoned land "clearly means zoning for the purposes of housing or economic activity". This in turn meant that the infrastructure assessment report envisaged by the NPF "is required if development is to be permitted…The purpose of it is to ensure that any such new development is supported by adequate infrastructure."

20. A key issue in the High Court was whether the Council was under a statutory obligation to prepare an infrastructure assessment report in the manner required by the NPF and whether the de-zoning of the applicant's lands was inconsistent with the NPF by not applying what was described by a "tiered approach" to zoning. It was conceded that the Council had not prepared such a report, but the Council maintained that it was not obliged to do so. So far as McGarrell was concerned, Humphreys J. held that none of its lands were "zoned lands" within the meaning of the NPF for the reasons just mentioned. Humphreys J. found that (at paragraph 19):

"… the zonings of their lands *in the current development plan* do not envisage and new development uses during the lifetime of the plan. Thus, they are not 'zoned' land for the purposes of Appendix 3 of the NPF." (Emphasis in the original)

21. It followed that the Council was not under an obligation to prepare an infrastructure assessment report.

22. The second issue was whether this statutory obligation to ensure that a development plan was consistent with the objectives of the NPF and the RSES applied only to the specified objectives contained therein or whether it also extended to the entirety of these documents.

This contention was rejected by Humphreys J. in *Killegland* (at paragraph 181): "The development plan is not required to comply with every provision of the NPF or RSES, only with objectives (which is a term of art and only relates to objectives that are expressly identified as such." He then incorporated this approach, *mutatis mutandis*, by reference (at paragraph 22) to the present case.

23. Humphreys J. then concluded (at paragraph 24) that, in any event, the Development Plan was consistent with the objectives of paragraph 4.3 of the RSES which stated that "core strategies may apply prioritisation measures and/or de-zoning of land where a surplus of land is identified in plans with regard to the NPF Implementation Roadmap of 2031." He further concluded (at 28) that insofar as RSES stated or implied that lands not required for housing should not be downzoned:

> "but should be earmarked for housing at a later date after the lifetime of the plan concerned, that cannot be translated into a legal requirement. Accordingly, a Council cannot be held to have invalidly made a plan by reason of not carrying out such an exercise."

24. In any event, Humphreys J. observed (at 30) that, following the judgment of McDonald J. in *Highlands Residents Association*, there was:

> "…no functional difference between downzoning lands and phasing them for residential development after the lifetime of the plan because on neither scenario would residential development be allowed under the plan itself."

25. As Humphreys J. pointed (at paragraph 132) the phrase "statutory obligations" in s. 11(1)(a) is not particularised. The phrase is, however, defined in s. 12. Section 12(11) first provides that in making a development plan:

> "…the members shall be restricted to considering the proper planning and development of the area to which the development plan relates, the statutory obligations of any local

authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government."

26. As I have just noted, s 12(18) then defines these obligations as including an obligation to ensure that the development plan is consistent with the objectives specified in the NPF and the RESS.

Part III: The arguments of the parties

27. It may be convenient now to summarise the arguments of the parties.

The Arguments of McGarrell

28. McGarrell contend that the Council was under an express obligation to ensure that the Development Plan "was consistent with the national…objectives specified in the National Planning Framework ("NPF") as per s. 10(1A), s. 12(11) and s. 12(18) of the 2000 Act". One of the objectives recited by s. 20B of the 2000 Act is "to secure balanced regional development by maximising the potential of the regions and [to] support proper planning and sustainable development."

29. McGarrell contends that the Council misconstrued section 4.3 of the Regional Spatial and Economic Strategy and/or failed to act in a manner consistent with the RSES, in breach of its statutory obligations under ss. 10(2A), 12(11) and 12(18) of the 2000 Act and that, as a result of such error, has de-zoned all of the appellant's lands in a manner inconsistent with the RSES, which dictates that an unreasonable dependency should not be created.

30. McGarrell insist, moreover, that the Council advanced erroneous and implausible reasons for not preparing an infrastructure assessment report and did not act as other local authorities would in so acting. It maintains, moreover, that the Council failed to give at least narrative mention of the content of their submission to demonstrate that the decision-maker had truly engaged with these issues.

31. McGarrell further contend that the public statement made by the Council in the explanatory memorandum with Variation No. 2 in 2014 put a specific onus on them to give reasons for departing from a prior commitment to a post-2019 residential zoning. McGarrell contend that a legitimate expectation arose which has been breached, not that they would not be downzoned, but that reasons would be given for departing from a previous statement of a prior commitment.

32. McGarrell also submit that Humphreys J. made a series of errors in relation to the scope and application of principles in their challenge: It says first that Humphreys J. adopted an unduly narrow interpretation to the requirement of an infrastructure assessment and a tiered approach as being restricted to lands which were already zoned under the existing or previous development plans, claiming that the conclusion that the appellant was not affected by the failure of the Council to carry these out cannot be correct. Second, it contends that Humphreys J. erred in distinguishing between the general content of the NPF and the RSES on the one hand and the specified objectives therein on the other. Finally, that the finding that a challenge to an individual zoning of a particular piece of land in isolation from the overall hierarchy and distribution of housing provision in the whole county is impermissible. McGarrell contend that the idea that the core strategy ought to have been expressly challenged is an unduly rigid approach to relief in judicial review proceedings.

The Arguments of Meath County Council

33. The Council contend that the challenge brought by McGarrell is an objection to the merits of the Council's decision, rather than an assessment of its *vires*. The Council contend that their decision complied with ss. 12(11), 12(18) and 10(2A) of the 2000 Act, and that their decision was not inconsistent with NPO 72a, 72b, 72c and Appendix 3 thereto, and as such, that they applied the relevant provisions of the NPF.

34. Furthermore, the Council contends that their decision also complied with Section 4.3 of the RSES. The Council contend that it is clear from s.10(8) of the 2000 Act that the Council was lawfully entitled to change the zoning of the appellant's lands in Kilcock and Stamullen.

35. The Council further submits that in purporting to consider alleged inaccuracy or inadequacy of reasons, the appellants rather seem to reargue the merits of the Council's decision. Nonetheless, the Council contend that there is no specific onus to explain and give reasons for lawful departure from a purported commitment. The Council claims they have applied the legal principles on the duty to give reasons and address submissions to the facts of the impugned decision-making process.

36. The Council also maintain that the reliefs sought by the appellants are in any case based on a misconceived contention that their lands should be zoned in a certain manner under the development plans. The Council contend that the appellants could not have had any legitimate expectation that the zoning of their lands would not be changed as there was no guarantee that a residential use would be designated post-2019. Thee Council moreover maintain that if the the appellants' lands were now to be zoned in this manner, that this would result in an impermissible breach of the core strategy, in that an excess of lands for residential development would be so zoned.

37. The Council contend that an infrastructural assessment report was not required in this case, and in any case, its absence did not cause the appellants to suffer real loss or prejudice in circumstances where the zoning for residential use would in any event have constituted an impermissible breach of the housing allocation provided within the core strategy.

38. The Council contend finally that the development plan was indeed consistent with the RESS. Section 4.3 of the RSES provides that "core strategies" of local authorities may allow for the de-zoning of lands. The RSES further envisages that the phasing of

development lands should ensure that towns grow at a sustainable level and that surplus lands should be held over development until 2027, i.e., a future development plan. Kilcock and Stamullen (i.e., where the applicant's lands are located) are identified as "Self-Sustaining Towns" within the meaning of Table 4.2 of the NPF as applied by section 10.2.2 of the Council's core strategy, thereby implying a "limited population growth and a more balanced delivery of housing."

39. The Council accordingly maintains that the decision to de-zone these lands is consistent with the objectives of the RSES.

Part IV: Whether it was necessary for McGarrell to challenge the entirety of the Development Plan

40. Before proceeding further, it may be convenient to mention here that McGarrell challenged *only* those provisions of the Development Plan as concerned *its own* four parcels of lands. In the High Court Humphreys J. concluded that there was, however, an obligation to challenge *the entirety* of the Development Plan, describing the failure to do so as a "fundamental problem" for McGarrell. He continued:

> . "And secondly, in accordance with the NPF, the distribution of new housing is required to be in accordance with a core strategy that forms a coherent whole when looking at all parts of the county. That strategy must be formed in the context of the regional and national housing hierarchy of provision, and so no individual piece of land can be looked at in isolation. The fundamental problem for the applicants is that a challenge to an individual zoning of a particular piece of land in isolation from the overall hierarchy and distribution of housing provision for the entire county is not a permissible exercise. The ultimate objective of quashing the zoning with a view to a different zoning being given would not achieve anything because it would result in a breach of the core strategy by virtue of an excess of lands being zoned for residential

development. The problem for the applicants which is that additional housing on their lands would breach the sequential approach set out in the core strategy. The applicants have not engaged with that, either in their submissions to the council or in the relief sought in these proceedings. One can contrast that with a submission on behalf of another landowner, submission reference no. MH-C5-627 on behalf of Glenvel GP (Jersey) Ltd., which proposed not just a rezoning of lands to A2 but also an addition to the core strategy (see Chief Executive's report, p. 152). The proposal went on to say that if the allocation was not increased then the lands should be listed in a sequential manner. That submission at least acknowledges the fundamental dynamic of the process and the need for each individual piece of land to find its place in an overall jigsaw. But there cannot validly be a process whereby a particular piece of land is simply to be added to the pile for housing. The size and distribution of the pile overall has to be addressed."

41. In the subsequent application for leave judgment ([2022] IEHC 683), this issue was again described by Humphreys J. in similar terms. Indeed, the judge considered (at paragraph 9) that it was so central that he did not consider it necessary to consider the application for leave to appeal in any further detail, and simply dismissed each of the grounds of appeal relied upon in a couple of sentences. As Humphreys J. observed (at paragraphs 5, 6 and 7) of the leave judgment:

"5. The fundamental problem for both applicants is summarised essentially in para. 20 of the McGarrell Reilly judgment. In accordance with the National Planning Framework, the distribution of new housing must be in accordance with a core strategy that forms a coherent whole when looking at all parts of the county. The county hierarchy in turn must be formed in the context of the regional and national housing hierarchy, so that no individual piece of land anywhere can be looked at in isolation,

and everything joins up within an overall headline level of housing provision. That headline level has already been accounted for in other, unchallenged, parts of the plan. The fundamental problem for the applicants is that a challenge to the individual zoning of a particular piece of land in isolation from any challenge to the overall hierarchy and distribution of housing provision is a pointless exercise, because no lawful outcome can result in the court creating (or making any order that would facilitate the council in creating) additional housing provision out of thin air for the benefit of the applicants' lands. Any additional housing on their lands would breach the hierarchical and sequential approach set out in the unchallenged core strategy. The applicants in both of these cases have simply not engaged with that point.

6. That lack of engagement has been a feature of the entire process. They did not engage with this difficulty when they made submissions to the council originally at the Draft Development Plan stage, nor did they seek any relief in the proceedings based on any substantial ground as to why the core strategy was defective. One can contrast that with the approach taken by a different landowner, submission reference number MH-C5-627 on behalf of Glenvel GP (Jersey) Ltd, which proposed not just a rezoning of specified lands to A2 housing, but also an amendment to the core strategy as set out at the Chief Executive's report, p. 152. The Glenvel landowners also made the fallback argument that if the overall allocation was not increased then the council should list their lands for housing in a sequential manner. That submission, in contrast to the approach of these applicants, acknowledges the fundamental dynamic of the process and the need for each individual piece of land to find its place in an overall jigsaw, where the housing allocation is determined hierarchically within an overall envelope.

7. To put it another way, there is no lawful way for the court to make an order whereby a particular piece of land is to be added to the pile for housing, if the applicant has not

challenged the size and distribution of the pile overall. The net position is that the total amount of provision for housing in County Meath is determined in the core strategy, and that provision is already spoken for in respect of other lands. There is thus no order that can be made that will be of benefit to the applicants, and the proceedings as constituted are futile in the absence of any pleaded let alone rational basis for challenging the core strategy. Thus the grant of leave to appeal cannot result ultimately in a benefit to the applicants on these pleadings, or affect the order actually made."

42. I find myself arriving at the opposite conclusion. In the circumstances of the present case there was no necessity for McGarrell to have challenged the entirety of Development Plan, something which would have affected thousands of landowners throughout the entire County of Meath. This would have been unnecessary, burdensome and likely to lead to both unnecessary costs and the waste of court time. Our entire system of judicial review is premised on the basis that applicants will challenge only those public law decisions which directly affect them. Indeed, McGarrell might well not have had standing to challenge the validity of the entire Development Plan. As I observed in *Killegland Estates Ltd.*, if there were ever to be any wider obligation on the part of a landowner to challenge features of a Development Plan other than those that relate to his or her own lands, this could only ever arise where a consequence of a finding of invalidity of the plan would have definite and clear implications for other landowners such that the latter would be entitled to be joined in any judicial review proceedings as being "directly affected" by that decision for the purposes of Ord. 84, r. 22(2) and (6) RSC.

43. One may thus say that, in general, it should only be possible (or even necessary) to challenge the entirety of a development plan if it was adopted following an inherently structurally flawed process or is manifestly based on a legally incorrect view of the constraints imposed by the 2000 Act. To take an extreme example, let us suppose that a

Council simply published a complete development plan without going through the statutory consultation process provided for by the 2000 Act. In those circumstances, any affected person could commence judicial review proceedings in which the Council would be the sole respondent. It would not be necessary to join all the landowners in the relevant county, although presumably any of them might apply to be joined as a notice party.

44. There might, however, be other types of special cases where, for example, the relief sought by an applicant would, if granted, have the effect of unbalancing a development plan to such an extent the extent that it contravenes the constraints imposed by the 2000 Act in that it provided for the zoning of excess residential land. Let us then suppose that the owner of a large site hopes for residential zoning for development and has, in fact, a strong case that the relevant provisions of the development plan were adopted ultra vires. If the potential effect of a court order quashing even parts of the development plan were to be that the zoning of certain existing landowners was thereby affected, then those landowners would have to be put on notice at an appropriately early stage in the judicial reviews, even though, of course, the respondent to those proceedings would remain the statutory body responsible for the development plan, namely, the relevant County Council in question.

45. Of course, if this issue were ever to arise in a specific case then it would be for the relevant Council to raise the objection that any fresh zoning which might follow the quashing by court order of part of a development plan could not be accommodated within the strictures of the 2000 Act on the grounds that it would inevitably lead to the excessive zoning of land for residential and other economic purposes. In those unusual circumstances it might even be that many other landowners would have to be then put on notice of the application for judicial review, although none of that requires to be decided in this case. A court would not, in any event, make an order which would have the effect of causing the Council to be in breach of its legal obligations. None of this means, however, that a development plan

can only be challenged in judicial review proceedings when the entirety of that plan is challenged by an applicant.

46. While the Council did raise this particular point as an objection, in the end it was not really pressed at the hearing before us. At all events it is sufficient to state at the outset that in the circumstances of the present case McGarrell was entitled to challenge those provisions of the Development Plan as concerned its own lands and in respect of which it had a direct interest and that it was not an objection (still less a fatal objection) that it had not challenged the entire plan.

Part V - The status of the McGarrell lands.

47. Perhaps the most singular – and, indeed, critical – feature of the present appeal is the extent to which these lands should be regarded as having the status of zoned lands for the purposes of the requirement that an infrastructure assessment be carried out and in respect of any NPF assessment. This requires an analysis of the current status of the lands under pre-existing Development Plan and the NPF. Of course, as Humphreys J. observed in *Killegland Estates (No.1)*, since all land is in one sense zoned, this term must mean in this context available for residential development and economic development. This, after all, is really the purpose of the zoning objectives in any development, where the local authority is required to form the view whether particular areas should be zoned "for particular purposes…where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated": see s. 10(2)(a) of the 2000 Act. This is re-inforced by the provision of s. 10(2A) of the 2000 Act which stipulates that in the case of zoning for residential purposes, the core strategy prepared by the planning authority must provide details of the size of the areas in question in hectares and further indicate (s. 10(2A)(d)(ii)) "how the zoning proposals accord with national policy that development land shall take place on a phased basis."

48. At all events, in his judgment in the High Court in the present case, Humphreys J. concluded (at paragraph 19) that the zoning of the lands in the 2013-2019 Development Plan "do not envisage housing and new development uses during the lifetime of the plan." It followed, therefore, that these lands were not zoned lands within the meaning of the NPF.

49. The zoning here was, as I have already indicated, an unusual one, namely, "A2 residential post 2019." It is accepted that these lands were not zoned residential for the purposes of the 2013-2019 Development Plan. Indeed, it is clear from *Highlands Residents Association* that the release of these lands for residential development during the currency of that Development Plan would have amounted to a breach of that Development Plan. But does the fact that the Council, so to speak, reserved these lands for potential future development beyond the lifetime of that plan by means of Variation No. 2 in 2014 have any legal status or implications so far as the present appeal is concerned?

50. Here it must be stressed – as McDonald J. did in respect of similarly zoned land in *Highlands Residents Association* – that any development plan simply has a six-year cycle. The statutory time limit of six years prescribed by s. 9 of the Act means that any development plan has what he described (at paragraph 42) as "a limited lifetime." (It is true that, as I have already noted, this particular six-year period was extended to seven years by reason of the exigency of the Covid-19 pandemic, but the basic point nonetheless holds true). In any event, s. 11(1)(a) of the 2000 Act requires the Council qua planning authority to review an existing plan after four years with a view to preparing a new plan. Section 12 of the 2000 Act prescribes the procedures to be followed in that case.

51. As McDonald J. noted in *Highlands Residents Association*, given the existing legislative framework, it is really not possible for any housing authority to bind itself into the future beyond the six-year lifetime of the plan so far as the making of a development plan is

concerned. While the language of Variation No. 2 did imply a commitment to residential zoning post 2019, this was not a commitment which the Council was empowered to give and insofar as it was given, it could not constrain future development choice. The matter rested with the elected members to decide, and this was a matter which fell to be determined by the members who were elected at the local elections in May 2019 when they came to vote on a new development plan for the (post-pandemic) 2020-2027 period.

52. In effect, therefore, the language of Variation No. 2 was, as McDonald J. noted, an ineffectual future promise which could not bind the planning authority. One can readily appreciate that McGarrell may feel a sense of disappointment given the express language of Variation No. 2 and the considerable sums of money it said it had spent preparing these sites for development, but there can be no such estoppel or legitimate expectation in view of these express statutory provisions governing the making of a future development plan contained in ss. 9-12 of the 2000 Act. As this Court has previously observed "it is incompatible with parliamentary democracy for the Courts, under the guise of estoppel or waiver or any other doctrine, to set aside the will of Parliament as constitutionally embodied in a statute": *Re Green Dale Building Co. Ltd*. [1977] IR 256 at 264 per Henchy J.

53. In these circumstances one must accordingly conclude that the McGarrell's lands were not zoned lands for the purposes of either the existing Development Plan or, for that matter, either the NPF or the RSES, precisely because the Council was not legally empowered to give commitments regarding residential developments beyond the lifetime of the existing Development Plan. This conclusion is relevant to the next question, namely, whether it was incumbent on the Council to prepare an infrastructure assessment report.

Part VI - Whether an infrastructure assessment report was required

54. A related issue is whether the adoption of the Development Plan was not compliant with the requirements of planning law by reason of the failure to ensure consistency with the

NPF (specifically Objective 72b and Appendix III) given the inter-action of the provisions s. 11(1)(a), s. 12(1) and s. 12(18)(a)(i) of the 2000 Act which have already been described in Part II of this judgment. In essence these provisions of the NPF contemplate what is described as a tiered approach in respect of development land, so that a distinction is drawn between zoned land which is currently available for development and zoned land that requires further significant investment in services for infrastructure. National Policy Objective 72b provides:

> "When considering zoning lands for development purposes that require investment in service infrastructure, planning authorities will make a reasonable estimate of the full cost of delivery of the specified services and prepare a report, detailing the estimated cost at draft and final plan stages."

55. The NPF envisages that, ideally, land already zoned for development should be developed first and, with a view to avoiding some of the mistakes of the past, local authorities should not zone new land without first examining whether by reason of the available infrastructure it is in fact suitable for these purposes and the cost to the Council of servicing the lands proposed to be zoned. It is common case that no infrastructure report of the kind contemplated by Objective 72b had ever been prepared by the Council. In my view, however, this was not a case where such could be said to have been required.

56. As I have already observed - and as Humphreys J. noted at paragraph 154 of his judgment in *Killegland Estates (No.1)* — it is a truism to state that in one, largely technical sense, all land is zoned land. That, however, is not the sense in which this term is obviously used in Objective 72b. The reference to "zoned land" in this context clearly refers to land which is or may be zoned for housing and development purposes. It would be all but pointless to require the Council to prepare an infrastructure report in circumstances where it was not

proposed to zone the land for housing and development purposes or at least where such is under consideration. As I have just indicated, the very object of Objective 72b is to ensure that lands are not zoned for housing and other development where the necessary infrastructure is wanting unless the financial and other implications of supplying such infrastructure are fully understood. This, in any event, is reflected in the express wording of Objective 72b. In these circumstances it cannot be said that, save for the special case of Haran's lands (which I will consider shortly), the changes to the Development Plan concerning McGarrell's lands did not comply with the strictures of the NPF and, by extension, the requirements of s. 12(18) of the 2000 Act by reason of the fact that the Council did not propose to zone these lands for residential or economic development.

57. Some may think that the conclusion that the lands are not zoned lands for the purposes of the 2021-27 Development Plan and the NPF would lead to anomalies of a kind that were not perhaps entirely foreseen by the drafters of the NPF. McGarrell points to the fact that land which was "up-zoned" from one development plan to another would escape any requirement that an infrastructure report would have to be prepared, even though this is precisely the type of land for which an infrastructure report might perhaps be the most appropriate. There are, I think, two answers to this.

58. First, Objective 72b of the NPF plainly applies where it is proposed to zone lands for residential development. This would also apply where it is proposed to zone for such development by means of an "up-zoning" of the lands in question from one development plan to another.

59. Second, the fact remains, however, that as the provisions of ss. 10, 11 and 12 of the 2000 Act currently stand, the Council can zone only for the currency of one development plan, and it cannot commit itself by express designation into the future beyond that statutory

period. As a matter of law, therefore, the pre-existing zoning of these - and all other lands - ceased upon the expiration of the 2013 Development Plan. This is a further, related reason why the lands do not have the status of zoned lands for the purposes of the NPF.

60. The situation with respect to Haran's lands is admittedly different. It was zoned for development purposes, namely, E3 Warehouse and Distribution. This would be sufficient to bring it within NPO 72b if it could be said that this "require[d] investment in service infrastructure." It is true that – as we shall presently see – a key objective of the NPF was to focus new development on existing brownfield and infill sites: see the narrative preceding NPO3c. This does not mean, however, that an infrastructure report is required only in such cases as the Council had argued. After all, the language of Objective 72b is sufficiently broad such that it is clear that the infrastructure requirement is not so confined. In any event, an infrastructure requirement would quite obviously serve important policy goals in cases other than brownfield or in-fill sites: the zoning of purely agricultural land for residential purposes is only the most obvious example of where an infrastructure report would most obviously be necessary.

61. It seems that these lands were partially serviced, but the case actually made by Messrs McCutcheon Halley in their submission to the Council in March 2020 in respect of this issue was that the

> "rezoning of [McGarrell's] site from A2 New Residential to E3 Warehouse and Distribution is unwarranted and threatens the delivery of much needed housing to Stamullen…The location of [McGarrell's] land immediately contiguous to the existing development at City North Business Park (which is an employment hub for Stamullen) means that its future development would be in accordance with the sustainable and compact growth objectives as set out in the NPF and RSES."

62. It may be noted that there is no suggestion here that the new E3 zoning would have required investment in service infrastructure. If there had indeed been such a requirement, this would have been a matter for McGarrell to raise before the High Court and to adduce evidence on this particular point. This also points to the futility of this argument from the developer's point of view. It might be conceivable that an objector would have a real interest in raising this point in order to challenge the zoning of lands which could impose a significant burden on the Council which had not been assessed with the benefit of an infrastructure report (conceivably in circumstances where other lands were available which were either fully serviced or could be serviced at less cost.) But this point cannot change the zoning from Warehouse to Residential: it can only ever result in the E3 Warehouse zoning being set aside. It impugns, if at all, the Council's decision to zone for Warehousing, not the Council's decision (of which the developer complains) not to zone the lands as residential.

63. What is clear, however, from the report of the Chief Executive is that the Council considered that other sites identified for future housing development were sequentially preferable as they were within close proximity to existing services; that there was very limited water and wastewater treatment facilities in the area, and that the Haran lands were not suitable for housing development purposes. In the circumstances McGarrell has not demonstrated that the Council were not required to conduct the infrastructure report in the manner otherwise required by NPO 72b in respect of these lands before deciding to zone for that purpose.

Part VII - Whether the decisions regarding the development plan consistent with the NPF

64. In addition to the infrastructure assessment requirement issue, McGarrell also contend for other reasons that the zoning decisions concerning these lands was not consistent with the

NPF and the RSES. It was said that these zoning were inconsistent with National Policy Objective 3c and objective RPO 3.2 of the RSES. All of this was said to amount to a breach of the provisions of s. 10(1A), s. 12(10) and s. 12(18) of the 2000 Act. I propose now to consider each of these arguments in turn.

65. Pausing at this point it is clear – as Humphreys J. noted at paragraph 129 of his judgment in the accompanying *Killegland Estates (No.1)* case – that one key object of these core strategy provisions is to ensure that development plans take proper account of projected population growth in any given areas. This in turn implies that the promiscuous and unlimited rezoning of land for residential housing - which in the past was often an unhappy feature of the entire development plan process – should no longer be permitted. It was against this background that Simons J. concluded in *Heather Hill Management Co. CLG v. An Bord Pleanála* [2019] IEHC 450 that the grant of a planning permission for large scale residential units at Bearna, Co. Galway amounted to a material breach of the development plan, precisely because this development would in itself have breached the projected population for the area by 25%. It followed that as "the permitted development, at one fell swoop bursts through those figures" in the development plan, this of necessity had to be a material breach: see paragraph 24 of the judgment. One can discern a similar approach in the judgment of McDonald J. in *Highlands Residents Association* where he held (at paragraph 42 of the judgment) that the Board had breached the terms of the Co. Meath Development Plan by granting planning permission in respect of certain lands which had been placed "beyond use for residential purposes for the duration of the Development Plan."

66. So far as the zoning objectives of any development are concerned, one may observe that the local authority is required to form the view whether particular areas should be zoned "for particular purposes…where and to such extent as the proper planning and sustainable

development of the area, in the opinion of the planning authority, requires the uses to be indicated": see s. 10(2)(a) of the 2000 Act. This is re-inforced by the provision of s. 10(2A) of the 2000 Act which stipulates that in the case of zoning for residential purposes, the core strategy prepared by the planning authority must provide details of the size of the areas in question in hectares and further indicate (s. 10(2A)(d)(ii)) "how the zoning proposals accord with national policy that development land shall take place on a phased basis."

67. It is next necessary to examine the relevant provisions of the NPF and RSES. Under the heading "Securing Compact and Sustainable Growth". National Policy Objective 3c states that:

> "A preferred approach would be compact development that focuses on reusing previously developed, 'brownfield' land, building up infill sites, which may not have been built on before and either reusing or redeveloping existing sites and buildings. … In the long term, meeting Ireland's development needs in housing, employment, services and amenities on mainly greenfield locations will cost at least twice that of a compact growth-based approach. Accordingly, subject to implementation of sustainable planning and environmental principles, the National Planning Framework sets the following urban development targets: …
>
> **National Policy Objective 3c**
>
> Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints." Section 4.5 of the NPF is entitled, "Achieving Urban Infill/Brownfield Development" and states, *inter alia*: "The National Planning Framework targets a significant proportion of future urban development on infill/brownfield development sites within the built footprint of

existing urban areas. This is applicable to all scales of settlement, from the largest city to the smallest village."

68. The NPF also envisages (at page 95):

"Projecting housing requirements more accurately into the future at a Regional Spatial and Economic Strategy and local authority development plan level (e.g. through Core Strategies) will be enabled by the provision of new statutory guidelines to ensure consistency of approach, implementation and monitoring

National Policy Objective 36

New statutory guidelines, supported by wider methodologies and data sources, will be put in place under Section 28 of the Planning and Development Act to improve the evidence base, effectiveness and consistency of the planning process for housing provision at regional, metropolitan and local authority levels. This will be supported by the provision of standardised requirements by regulation for the recording of planning and housing data by the local authorities in order to provide a consistent and robust evidence base for housing policy formulation."

69. Section 4.5 of the NPF further recites – echoing the earlier language of Objective 3c – that it "targets a significant portion of future urban development on infill/brownfield sites within the built footprint of existing urban areas." The NPF then provides (at 137) that Objectives 72a, 72b and 72c have to be read in conjunction with Appendix 3 of that document:

"A new, standardised methodology will be put in place for core strategies and will also address issues such as the differentiation between zoned land that is available for development and zoned land that requires significant further investment in services for infrastructure for development to be realised. This is set out in Appendix 3.

National Policy Objective 72a

Planning authorities will be required to apply a standardised, tiered approach to differentiate between i) zoned land that is serviced and ii) zoned land that is serviceable within the life of the plan.

National Policy Objective 72b

When considering zoning lands for development purposes that require investment in service infrastructure, planning authorities will make a reasonable estimate of the full cost of delivery of the specified services and prepare a report, detailing the estimated cost at draft and final plan stages.

National Policy Objective 72c

When considering zoning land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development."

70. The NPF then deals with Prioritising Development Lands:

"There are many other planning considerations relevant to land zoning beyond the provision of basic enabling infrastructure including overall planned levels of growth, location, suitability for the type of development envisaged, availability of and proximity to amenities, schools, shops or employment, accessibility to transport services etc. Weighing up all of these factors, together with the availability of infrastructure, will assist planning authorities in determining an order of priority to deliver planned growth and development. This will be supported by updated Statutory Guidelines that will be issued under section 28 of the Planning and Development Act 2000 (as amended).

National Policy Objective 73a

Guidance will be developed to enable planning authorities to apply an order of priority for development of land, taking account of proper planning and sustainable development, particularly in the case of adjoining interdependent landholdings.

National Policy Objective 73b

Planning authorities will use compulsory purchase powers to facilitate the delivery of enabling infrastructure to prioritised zoned lands, to accommodate planned growth.

National Policy Objective 73c

Planning authorities and infrastructure delivery agencies will focus on the timely delivery of enabling infrastructure to priority zoned lands in order to deliver planned growth and development."

71. Appendix 3 of the NPF addresses the tiering of land issues.

72. In many ways, just as with *Killegland Estates,* an important question so far as this appeal is concerned is the extent to which the operation of the NPF and the RSES is intended to be prescriptive and, again, whether the lands are zoned. It is certainly true that, as McGarrell observe, the RSES expressly contemplates that in the case of surplus land not immediately available for development the Council should consider land prioritisation measures rather than the de-zoning of lands *currently* zoned for residential development. So section 4.3 of the RSES provides (at page 50) that:

"the consideration of development land prioritisation measures by local authorities rather than 'dezoning' of land where there may be a surplus would be more appropriate…The NPF or the NPF Implementation Roadmap document do not seek the downzoning of land, however."

73. One may accordingly agree that s. 23(1) of the 2000 Act contemplates that the RSES will provide a "long-term strategic planning and economic framework for the development of the region" over a period of not less than twelve years and not more than twenty years." McGarrell's argument here is that as Variation No. 2 contemplated that the lands would have a post-2019/2020 residential zoning the treatment of these lands post-2021 means that the development plan was in this respect necessarily inconsistent with the RSES because the then surplus land (i.e., in 2014) should have been prioritised for residential development over a longer timeframe. This failure was said to amount to a breach of the provisions of the 2000 Act.

74. This argument pre-supposes, however, that the Council could validly have given a commitment regarding residential zoning beyond the lifetime of the Development Plan. It may well be that local authorities may often seek to reserve lands for future large-scale development projects well beyond the lifetime of any six-year development plan. I nevertheless agree with Humphreys J. insofar as he held (at paragraph 28) that the RSES (or, I would add, for that matter, the NPF) could not be interpreted as imposing an obligation on the Council to provide for something outside of the lifetime of any given development plan. Any other conclusion would effectively set at naught the current mechanisms regarding the making of any development plans contained in ss. 10-12 of the 2000 Act.

75. Guidelines and strategic plans made pursuant to statute - such as the NPF and the RSES - cannot prevail - or be allowed to take precedence over - the express nature of the statutory structure regarding the making of development plans. If it were otherwise, it would mean that, in substance, the Oireachtas would have delegated power to the executive to effect an amendment to ss. 10-12 of the 2000 Act by the making of statutory guidelines under s. 23 of the 2000 Act. In view of the provisions of Article 15.2.1º this would clearly be

unconstitutional: see, *e.g., Dunnes Stores v. Revenue Commissioners* [2019] IESC 50 at paragraphs 115-116, per McKechnie J.

76. The simple answer, therefore, to McGarrell's arguments regarding the NPF and the RSES is that these guidelines had no application at all to three of the four parcels of lands so far as the present (2021-2027) development plan is concerned. (I propose to consider separately the situation regarding Haran's lands). It is clear from *Highlands Residents Association* that these three parcels of lands were not zoned lands for the purposes of pre-existing Development Plan since they were not zoned for residential (or, for that matter, other economic) development during the lifetime of that plan. Nor could the adoption of Variation No. 2 in 2014 validly purport to have conferred that status upon them in respect of some future development plan post-2019/2020 such as might otherwise have triggered the application of either the NPF or the RSES.

77. It is, however, correct to say that Haran's lands are currently "zoned lands" within the meaning of the NPF and Appendix 3, even if, for the reasons already given, they were not so zoned under the provisions of the earlier development plan. They bear the designation "E3 Warehouse and Distribution" under the current Development Plan 2021-2027. But the fact that these lands happen to be zoned lands with this designation has no particular bearing on the issues in this appeal having regard to the nature of the zoning and the location of these lands. They are not zoned for residential development, and it is common case that they are currently in agricultural use. Nor is there any recorded history of planning applications in respect of these lands. They cannot therefore be regarded as a brownfield site. And while they are admittedly adjacent to lands zoned A1 Existing Residential, there is no contention that Haran's lands represent an infill site such as might otherwise trigger the potential application of, for example, NPO 3c.

78. For all of the reasons I do not consider that on the facts of this appeal that the Council was in breach of its obligation under s. 12(18) of the 2000 Act to ensure the general consistency of the new development plan with the provisions of the NPF.

Part VIII: The adequacy of the reasons

79. It remains to consider the arguments regarding the adequacy of the reasons. McGarrell made detailed submissions through its planning consultants concerning the zoning of the four properties on 6th March 2020. On the same day the Office of the Planning Regulator also made submissions. Numerous members of the public also made submissions. One should recall, of course, that the making of this Development Plan was a very onerous undertaking on the part of the Council, involving as it did the consideration of hundreds of submissions and the need to provide a planning framework for a large county. Some allowance must accordingly be afforded to the Council in this regard.

80. In her report dated 13th August 2020 the Chief Executive addressed the status of the four parcels of lands in question and gave detailed reasons for her conclusions in respect of each of them.

81. In the case of Stamullen she said that in respect of Crowe's land and the Silverstream lands that future development would focus on "consolidation and completion of extant permissions. There was extant permission for 205 housing units and there were "other under-utilised infill and brownfield sites in the town which have the potential to be developed for residential uses." She did not consider that McGarrell's lands represented a "sequentially preferable location for future housing development." Unlike the infill and brownfield sites which were in close proximity to existing services in the village core, McGarrell's lands were on the outer periphery. Development here would be likely to lead

"to urban sprawl" which would be likely to mar the distinction "between the town and the open countryside."

82. The Chief Executive gave similar reasons in respect of the Haran's lands which lie just to the north of Stamullen. It was proposed to change the zoning from Phase II New Residential (Post 2019) to E3 Warehousing and Distribution "associated with the [nearby] City Northern Business Park." She noted that future development of the town "will focus on consolidation and the completion of extant permission" and that this would be concentrated "in two residential units to the south" of the Business Park. Having noted the existence of "under-utilised in-fill and brownfield lands in the town which have the potential to be developed for residential uses". She also noted that there was "very limited capacity in the water and wastewater treatment facilities which will further restrict the identification of future zoned residential lands."

83. So far as the Kilcock lands were concerned, the Chief Executive stated, in effect, that sufficient land had been designated for housing in that area so far as the life of the 2021-2027 Development Plan was concerned. While these lands had originally been the subject of the Variation No. 2 zoning, this anticipated residential zoning was pushed back again to beyond 2027. Kilcock (and, indeed, Stamullen) had been designated as a "self-sustaining town" in the Council's core strategy which had been adopted as part of the development plan process. (This was defined as a town "with high levels of population growth and a weak employment base which are reliant on other areas for employment and/or services and which require targeted 'catch-up' investment to become more self-sustaining.") These lands were "adequately designated as Post 2027 lands and that the lands zoned for residential development during the period of the Draft Plan are preferable."

84. The Chief Executive further referred to the provisions of s. 10(8) of the 2000 Act, saying that the prior zoning or designation of the particular lands in the earlier Development Plan (i.e., in this instance by virtue of Variation No.2) "does not imply that the land [will] be addressed [in the same manner] as part of a subsequent development plan." It is perhaps only fair to add that the Chief Executive did not base her reasons on any question of the vires as such of the earlier 2014 Variation No. 2 commitment, but rather simply on the fact that by reasons of s. 10(8) the earlier zoning did not necessarily mean that this zoning had to be maintained and carried forward in the Development Plan. She added that the designation of these lands would be inconsistent with the Council's own core strategy "as well as the approach to zoning outlined as part of the NPF…the RSES and the Development Plan Guidelines 2000-2027."

85. For my part, save, perhaps, in one respect, I find it impossible to say that the reasons given in respect of all four parcels of lands are other than rational, intelligible and comprehensive. Here it must be observed that the Council could not simply act on the basis of the commitments given in 2014 in Variation No. 2 and the relevant provisions of the Development Plan would have been open to challenge if it had. The Council was nonetheless under an obligation to give reasons for its various decisions. It could, of course, elect to zone particular land the subject of these earlier commitments for development for valid planning reasons, because if this had occurred it would not simply have been acting on the basis of an earlier ultra vires commitment.

86. In the event, however, that the Council decided not to zone particular land for development, the earlier commitment contain in Variation No. 2 notwithstanding, it would not then have been enough for it to say simply that the 2014 commitment was not binding so far as the making of the new Development Plan was concerned. There would still have been a

necessity to justify any particular decision by reference to appropriate and valid planning reasons.

87. In each case, reasons have been given for the decisions made in respect of the Development Plan. While in some instances the reasons might perhaps have been more clearly explained, this is nonetheless far from a case such as *Christian v. Dublin City Council* [2012] IEHC 163, [2012] 2 IR 506 where no reasons whatever were given in respect of the (highly restrictive) zoning of certain lands. Judged, therefore, by the test articulated by Clarke J. in *Christian* and confirmed by this Court in cases such as *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 3 IR 752 and *Balz v. An Bord Pleanála* [2019] IESC 90, [2020] 1 ILRM 637 the reasons given here are sufficient for these purposes. After all, the reasons given were sufficient for McGarrell to know in at least general terms the reasons why these decisions were taken. Nor can it be said in the words of Clarke C.J. in *Connelly* that the reasoning was "so anodyne that it is impossible to determine why the decisions went one way or the other" [2021] 2 IR 752 at 780. They also had sufficient information to consider whether they could or should avail of any right to seek judicial review of the relevant portions of the development plan:

88. Perhaps the only area where the reasons given are not as fulsome as they might ideally have been related to the decision of the Council to depart from the prior commitments given in 2014 with Variation No. 2 in respect of these parcels of lands. As I have already noted, the 2014 Variation No. 2 was not – and could not have been – legally binding. Accordingly, the Council could not simply proceed to keep this zoning just because a commitment had previously been given in 2014. It was rather required to consider afresh what the appropriate zoning status of the lands should be having regard to the relevant planning reasons and to explain in general terms why the lands were so zoned in respect of this particular Development Plan.

89. For my part, I consider that the Council has nevertheless done this. This perhaps was most fully explained in the case of the Kilcock site, but I think it clear nonetheless that this reasoning applies, *mutatis mutandis*, to the three Stamullen sites as well. In effect the Council has explained that the 2014 Variation No. 2 was not legally binding (expressly in the case of Kilcock and tacitly in the case of the Stamullen lands) and set out why there are sound planning reasons for the zoning of the four sites in question in the new Development Plan. This is. I think, sufficient to satisfy the reasons requirements as enunciated in cases such as *Christian, Connelly* and *Balz.*

Part IX - Conclusions

90. In summary, therefore, I would conclude as follows:

A. While the four parcels of lands at issue in these proceedings were admittedly zoned in 2014 for future residential development post-2019, the Council was not empowered to give legally binding commitments in respect of future development plans.

B. In view of the decision of McDonald J. in *Highlands Residents Association* these lands were not available for residential housing during the currency of the 2013-2019 development plan. It follows that these lands did not have the status of zoned lands for the purposes of the NPF or the RSES.

C. One parcel of the four lands, namely, Haran's lands are currently "zoned lands" within the meaning of the NPF and Appendix 3, even if, for the reasons already given, they were not so zoned under the provisions of the earlier development plan. They bear the designation "E3 Warehouse and Distribution" under the current Development Plan 2021-2027. But the fact that these lands happen to be zoned lands with this designation has no particular bearing on the issues in this appeal having regard to the nature of the zoning and the location of these lands, specifically because they are not zoned for residential development.

D. There was no need to have prepared an infrastructure report in the circumstances of this case. The reference to "zoned land" in the NPF clearly refers to land which is or may be zoned for housing and development purposes. It would be all but pointless to require the Council to prepare an infrastructure report in circumstances where it was not proposed to zone the land for residential development. The object of Objective 72b is to ensure that local authorities are fully aware of any potential infrastructure deficits when considering whether to zone lands for housing and other development. In these circumstances it cannot be said that the changes to the development plan concerning McGarrell's lands did not comply with the strictures of the NPF and, by extension, the requirements of s. 12(18) of the 2000 Act.

E. The zoning of Haran's lands, namely, E3 Warehouse and Distribution would be sufficient to bring it within NPO 72b if it could be said that this "require[d] investment in service infrastructure." But as there was no evidence tendered by the applicant to support the contention that these lands required investment in service infrastructure, the Council was entitled to zone the lands as E3 Warehouse and Distribution without requiring a report of this kind.

E. It cannot be said that the reasons given for the individual zoning decision were not rational, intelligible and comprehensive or that the requirements in respect of the adequacy of reasons identified in cases such as *Christian, Connelly* and *Balz* have not been satisfied.

91. In these circumstances I would dismiss the appeal and uphold the decision of Humphreys J. in the High Court.