

**THE HIGH COURT
JUDICIAL REVIEW**

[2016 830 JR]

BETWEEN**MCCARTHY MEATS LIMITED****APPLICANT****AND****THE MINISTER FOR HOUSING, PLANNING AND LOCAL GOVERNMENT****RESPONDENT****AND****KILDARE COUNTY COUNCIL****NOTICE PARTY**

**JUDGMENT of Mr. Justice Heslin delivered on the 27th day of July, 2020
Introduction**

1. The background to the dispute before the Court can be summarised as follows. The Applicant is a limited liability company. It owns some 185 acres of land in Sallins, Co. Kildare. In 2009, the Notice Party introduced a Sallins Local Area Plan (hereinafter "the 2009 LAP"). Approximately 90 acres of the Applicant's lands were zoned in the 2009 LAP, including 30 acres of land which were zoned "New residential". In June 2015, the draft Sallins Local Area Plan 2016 – 2022 was published (hereinafter "the draft LAP of June 2015") and went on public display. Under the draft LAP of June 2015, instead of 90 acres of the Applicant's land being zoned, 28 acres were zoned "Industry and Warehousing". None of the Applicant's land was zoned "New residential". Various submissions were made in relation to the draft LAP of June 2015, including a submission by the Respondent and a submission by a professional planning consultant on behalf of a limited liability company entitled "McCarthy Meats Processing Limited", which company operates from the same registered address as the Applicant. The submission on behalf of McCarthy Meats Processing Limited proposed that the zoning of lands be as they were under the 2009 LAP, with an additional portion of lands to be zoned as "Open Space and Amenity" which McCarthy Meats Processing Limited proposed to make available.

2. A Special Meeting of Naas Municipal District Council took place on 22 October 2015. The meeting considered 21 proposed "material alterations" to the draft LAP of June 2015. The chief executive's opinion, which appears in the relevant minutes, was opposed to the proposed material alterations for stated reasons. Despite this, the elected members resolved that the relevant lands be zoned as "New residential – 30 acres; Open Space/Amenity – 37 acres, and Educational – 3 acres". This zoning was known as "Material Alteration 20" (or "MA20"). Material Alterations were published on 1 December 2015. On 8 January 2016, the Respondent Minister wrote to the Notice Party making a submission which stated, inter alia, that MA20 was inconsistent with the Core Strategy of the Kildare County Development Plan 2011 – 2017 (hereinafter "KCDP 2011"). The submission also explained why, in the Respondent's opinion, MA20 was inconsistent with the "Development Plans: Guidelines for Planning Authorities, 2007" (hereinafter "the 2007 Guidelines") issued by the Minister pursuant to s. 28 of the Planning and Development Act 2000 (as amended) (hereinafter "the PDA 2000"). A Special Meeting of Naas Municipal District took place on 9 March 2016. At that meeting, the eight elected members present

unanimously voted in favour of MA20. On 5 April 2016, the Respondent wrote to the Notice Party enclosing a draft "Direction" under Section 32 of the PDA 2000. The said letter informed the Notice Party that the Respondent Minister was considering directing it to amend the Sallins Local Area Plan of 5 April 2016 (hereinafter "the LAP of 5 April 2016") such that MA20 was no longer incorporated into it. Insofar as these proceedings are concerned, the consequence of such a Direction would be for the zoning status of the Applicant's lands to revert to the position set out in the draft LAP of June 2015. A notice of the draft direction was published on 12 April 2016. There were 2,149 submissions made, of which 2,148 were in favour of MA20. These included submissions by McCarthy Meats Processing Limited, as well as submissions from elected members of the Notice Party.

3. On 3 June 2016, the Minister appointed an independent Inspector, pursuant to s. 31(13) of the PDA 2000, to carry out a review of the draft Direction and the Inspector issued a report dated 24 June 2016. The inspector recommended that the zoning "New Residential" and "Educational" be removed from MA20 and that the "Open Space & Amenity" zoning be retained. On 8 August 2016 the Minister issued the Sallins Local Area Plan 2016 – 2022 Direction 2016 ("the Direction"). This directed that the zoning "New Residential", "Educational" and "Open Space & Amenity" contained in MA20 be omitted. The Direction, which had immediate effect under s. 31(17), resulted in the zoning status of the Applicant's lands being that which was set out in the Sallins LAP of June 2015, as a consequence of which none of the Applicant's lands were zoned for residential development. In the present proceedings the Applicant challenges the Respondent's decision to issue the Direction.

The relief sought

4. By order dated 12 December 2016 the Applicant was granted leave to apply for judicial review in respect of the relief set out at para. D of the Applicant's statement of grounds dated 3 November 2016, on the grounds set out at para. E thereof. The relief sought in para. D of the Applicant's statement of grounds is as follows: -
 - "1. *An order of certiorari quashing the Decision of the First named Respondent to issue a Direction dated the 8th day of August 2016 pursuant to s. 31 of the Planning and Development Act 2000 (as Amended) in respect of the Applicant's lands at Bodenstown, Sallins, Co. Kildare which direction is dated the 8th day of August 2016.*
 2. *A declaration that the aforesaid direction dated the 8th day of August is contrary to and inconsistent with s. 31 of the Planning and Development Act 2000 (as Amended).*
 3. *A declaration that in formulating the aforesaid direction dated the 8th day of August 2016 issued under s. 31 of the Planning and Development Act 2000 (as Amended) the first named Respondent made fundamental errors of law and fact which vitiates the basis of the Direction issued.*

4. *An order vacating the terms of the direction dated the 8th day of August 2016 insofar as it applies to the Sallins Local Area Plan 2016 – 2022 and allowing to remain unaltered variation no. 20 of the Sallins Local Area Plan 2016 – 2022 and allowing to remain unaltered variation no. 20 of the Sallins Local Area Plan adopted by the elected members on the 9th March 2016.*
5. *Interim and/or Interlocutory relief.*
6. *An order requiring the disclosure of all documents in the power or possession or procurement of the first and second named Respondents relating to or connected with the preparation of the Sallins Local Area Plan 2016 – 2022 insofar as it relates to the Applicant's lands including any correspondence between the first and second named Respondents with any third parties including any documentation in electric form, relating to or connected with the Applicant's lands or lands of a like kind.*
7. *Further and other reliefs.*
8. *The costs of this application”.*

The parties

5. When these proceedings were first commenced, there were two Respondents, namely the Minister and the Council. By order made 19 June 2019, it was ordered that the title of the proceedings be amended such that the second named Respondent be removed as a Respondent and be named instead as a Notice Party. A letter dated 23 July 2019 sent by Messrs Reddy Charlton, solicitors on record for the Applicant, to Messrs Regan McEntee & Partners, solicitors for the Notice Party, states inter alia:-

“We agree that we will make no allegation of wrongdoing against Kildare County Council subject to the Applicant being entitled to rely on all affidavits filed [including those filed by Kildare County Council] to ground the Applicant's claim in respect of the State Respondent”.

The circumstances leading up to the foregoing letter shall be examined in greater detail, later in this judgment. For present purposes, it is important to note that relief is sought against the Respondent Minister only. This is important, given that the affidavits sworn on behalf of the Applicant direct certain criticisms at the Council.

The pleadings and affidavit evidence

6. The Applicant's case is set out in the statement of grounds dated 3 November 2016. On the same date, a verifying affidavit was sworn on behalf of the Applicant by Mr. Seamus McCarthy, company director. This affidavit runs to 63 paragraphs and refers to numerous exhibits. Mr. McCarthy also swore a supplemental affidavit, comprising 17 paragraphs, on 14 November 2016 in which he exhibited a significant amount of additional documentation. On 12 December 2016, Mr. Stuart Logan, planning adviser, swore an affidavit, comprising six paragraphs, with exhibits, on behalf of the Respondent. The Respondent's statement of opposition is dated 20 February 2017 and a verifying affidavit was sworn on the same date by Mr. Niall Cussen, principal planning adviser, on behalf of

the Respondent, comprising 107 paragraphs and numerous exhibits. At a time when Kildare County Council was the second named Respondent, a statement of opposition was delivered dated 6 April 2017, the relevant verifying affidavit being sworn, on 4 April 2017 by Mr. Michael Kenny, senior planner, comprising 28 paragraphs. In addition, an affidavit was sworn by Mr. Kenneth Kavanagh, senior executive officer, of Kildare County Council's planning department, on 4 April 2017, running to 23 paragraphs. A short affidavit was also sworn on 4 April 2017 by Mr. Alan Cunniffe, formerly employed in the planning department of Kildare County Council. Further affidavits were sworn in the context of seeking discovery which are no longer of relevance.

7. I have carefully considered the contents of all affidavits and it is fair to say that they include a significant amount of argument, as opposed to being limited to a setting out of facts. For this reason, it is not necessary or useful to examine each affidavit on a paragraph by paragraph basis. It is, however, important to identify the facts which emerge from an examination of the affidavit evidence and to look, in some detail, at the relevant documentation in this case. I propose to do so in chronological order, insofar as possible.

Certain key legislation

8. At the outset, it is useful to set out certain legislative provisions, as they applied on 8 August 2016 (being the date of the Respondent's Direction which is challenged in the present case), which are of fundamental relevance to these proceedings. Section 31(1) of the PDA 2000 provided that:

"Where the Minister is of the opinion that –

(a) a planning authority, in making a development plan, a variation of a development plan, or a local area plan (in this section referred to as a "plan") has ignored, or has not taken sufficient account of submissions or observations made by the Minister to the planning authority under section 12, 13 or 20

(b) [...]

(c) the plan is not in compliance with the requirements of this Act, or

(d) [...]

the Minister may in accordance with this section, for stated reasons, direct a planning authority to take such specified measures as he or she may require in relation to that plan."

The Direction in the present proceedings was issued pursuant to section 31(1)(a) and (c).

As made clear in the Direction, the Respondent Minister formed the opinion that the Notice Party ignored or had not taken sufficient account of written submissions made by the Respondent Minister to the Notice Party, prior to the latter's adoption of a Local Area Plan for Sallins in 2016, namely the Respondent's 08 January 2016 submissions.

Furthermore, the Respondent formed the opinion that the Sallins Local Area Plan 2016 – 2022, which the elected members adopted, was not in compliance with the requirements of s. 19, s. 20 and s. 28 of the PDA 2000, Section 19(2) of which requires that: -

“A local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan...”.

Section 20 of the PDA 2000 deals with “Consultation and adoption of local area plans” and s. 20(r) states that:

“When performing their functions under this subsection, the members of the planning authority shall be restricted to considering the proper planning and sustainable development of the area, 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”.

Section 28 of the PDA 2000 provides that:

“(1) The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions and planning authorities shall have regard to those guidelines in the performance of their functions.

(1A) Without prejudice to the generality of subsection (1) and for the purposes of that subsection a planning authority in having regard to the guidelines issued by the Minister under that subsection, shall-

(a) Consider the policies and objectives of the Minister contained in the guidelines when preparing and making the draft development plan and the development plan, and

(b) Append a statement to the draft development plan and the development plan which shall include the information referred to in subsection (1B)...”

Subsection (1B) deals with the statement which shall include information demonstrating how the planning authority has implemented the Minister’s policies and objectives contained in the guidelines and if the planning authority formed the opinion that it was not possible to implement certain policies and objectives contained in the Minister’s guidelines, reasons must be given.

Regional Planning Guidelines (RPGs) for the Greater Dublin Area 2010 -2022

9. In his affidavit sworn 20 February 2017, Mr. Niall Cussen exhibits a copy of the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022 (“RPG’s”). The RPG’s contain, inter alia, a Table entitled “Table 8: Settlement typology and hierarchy”. This hierarchy lists, in descending order, the following: -

“Gateway Core”

“Metropolitan Consolidation Towns”

"Large Growth Towns I"

"Large Growth Towns II"

"Moderate Sustainable Growth Towns"

"Small Towns"

"Villages"

In relation to the location of Small Towns, Table 8 makes it clear that these are "To be defined by Development Plans". The Kildare County Development Plan 2011 – 2017 (hereinafter "KCDP 2011 – 2017") was the County Development Plan for Kildare at the time the Respondent Minister issued the Direction which is challenged in the present proceedings. The KCDP 2011–2017 designated Sallins as a "Small Town". That was consistent with the terms of the RPGs. Later in this judgement I will examine in detail the contents of the KCDP 2011 – 2017, in particular, its "Core Strategy", including settlement strategy and settlement hierarchy. The importance of the settlement hierarchy is made clear in the RPG's which state inter alia:-

"It is critical in developing settlement strategies in future Development Plans that Councils have due regard to the hierarchy of towns in the table, and carefully consider the phasing of housing land to ensure that towns grow at a suitable and sustainable scale, appropriate to their position in the hierarchy. . ."

10. Under the heading "Small Towns" in s. 4.6 which is entitled "Defining the Key Elements of the Strategy", the RPG's state the following: -

"The classification of small towns is, as previously in the 2004 Regional Planning Guidelines, largely synonymous with the centres identified by the NSS as yielding population between 1,500- 5,000 people and are located within the Hinterland area. Planning authorities shall designate towns appropriate to this category within the Development Plan for the County. Relatively small and locally financed businesses are expected to locate in Small Towns; however, other economic investment opportunities should be considered and supported where sustainable and in keeping with the size and services of the town. Retail is likely to be mainly in the convenience category, with a small supermarket and possible local centres serving only the town and its local catchment area. Small Towns would likely contain facilities such as a primary schools, secondary school, health clinic and sports facilities . . .

Levels of growth in all small towns shall be managed in line with the ability of local services to cater for any growth, responding to local demand and in line with the recommendations for small towns described in the DoEHLG Guidelines -Sustainable Residential Development in Urban Areas".

The 2007 Guidelines – a Local Area Plan and its "parent" County Development Plan

11. Mr. Cussen also exhibits, inter alia, "Development Plans: Guidelines for Planning Authorities, DEHLG, June 2007" ("the 2007 Guidelines"). Internal p. 14 of the 2007 Guidelines refers to the preparation of a local area plan by a planning authority and states inter alia the following: -

"In providing development frameworks for particular areas, or parts of an area, local plans should address relevant issues in greater detail than in the development plan, but on a basis consistent with the approach of the development plan for the overall area.

The Planning and Development (Amendment) Act 2002 requires that a local area plan shall be consistent with the objectives of the development plan. A local area plan shall consist of a written statement and a plan (or plans)...

The development plan is thus the 'parent' document, which sets out the strategic framework within which the zoning and other objectives of the local area plan must be formulated. For example, the zoning of lands for use solely or primarily as residential development should have regard to the Council's housing strategy".

Factors in determining zoning under the 2007 Guidelines

12. Internal pages 41 and 42 of the 2007 Guidelines contains, inter alia, the following: -

"Factors in determining Zoning

4.10 To support public confidence in the planning system and the development plan, decisions to zone land must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan...

4.12 In addition to the above, when considering the suitability of specific lands for development, within the process of preparing zoning objectives in making a development plan, the members are restricted to considering the proper planning and sustainable development of the area to which the development plan relates, statutory obligations and Government policy. Matters typically relevant to the proper planning and sustainable development of areas, inter alia, include:

- Need
- Policy Context
- Capacity of Water, Drainage and Roads Infrastructure
- Supporting Infrastructure and Facilities
- Physical Suitability
- Sequential Approach
- Environmental and Heritage policy, including conservation of habitats and other sensitive areas . . ."

The "Sequential Approach" to development under the 2007 Guidelines

13. Internal p. 45 of the 2007 Guidelines states inter alia, the following: -

"(f) *Sequential Approach*

4.19 In order to maximise the utility of existing and future infrastructure provision and promote the achievement of sustainability, a logical sequential approach should be taken to the zoning of land for development:

- (i) Zoning should extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. 'leapfrogging' to more remote areas should be avoided);
- (ii) A strong emphasis should be placed on encouraging infill opportunities and better use of under-utilised lands; and
- (iii) Areas to be zoned should be contiguous to existing zoned development lands. Only in exceptional circumstances should the above principles be contravened, for example, where a barrier to development is involved such as a lake close to a town. Any exceptions must be clearly justified by local circumstances and such justification must be set out in the written statement of the development plan".

The 2013 Guidelines

14. In June 2013, the Department of the Environment, Community and Local Government issued "Local Area Plans – Guidelines for Planning Authorities" (hereinafter "the 2013 Guidelines"). Mr. Niall Cussen exhibits a copy of the 2013 Guidelines which contain an Appendix. The following statement appears at the top of the Appendix: -

"This table identifies particular aspects of other guidelines published by the Minister under Section 28 of the Planning Act 2000-2012 or other documents that will, inter alia, be of particular relevance in preparing and implementing local area plans".

The sixth item listed in the table is specified to be the "*Development Plans Guidelines (June 2007)*". Among other things, the 2013 Guidelines go on to state, on internal p. 10, that: -

"Section 19(2) of the Act requires local area plans to be consistent with the objectives of the development plan, its core strategy, and regional planning guidelines".

Section 2.4 of the 2013 Guidelines states the following: -

"2.4 Local Area Plans and Higher-Level Plans and Strategies

Local area plans must play a key role in achieving the objectives contained in higher level plans and strategies such as:

- the National Spatial Strategy (NSS);
- Regional Planning Guidelines (RPGs);
- City and County Development Plans; and
- General Government Policy

To comply with the requirements of the legislation therefore, the local area plan must be fundamentally guided and shaped by:

- any specific aims and objectives for the area of the local area plan in the relevant Regional Planning Guidelines;
- more specific objectives for the area of the local area plan identified within the core strategy of the relevant City or County Development Plan, including population targets and quantities of land required for residential or other purposes within such core strategy; and
- the capacity of existing essential social (schools, community facilities) and physical (transport, water services, communications) infrastructure, including the realistic prospects for addressing capacity constraints.

Core Strategies

It is essential requirement (sic) that local area plans are consistent with the core strategies of the relevant development plan.

An essential element of consistency is that the quantum and type of development envisaged under a local area plan is in line with the core strategy of the relevant development plan, especially anticipated future levels of population, requirements for different categories of land for future development, particularly so in relation to residential development. . . .”

Sallins Local Area Plan 2009

15. The 2009 LAP for Sallins was adopted as of 26 January 2009. In the introduction to same, reference is made to Part II Chapter II ss. 18 – 20 of the P&D Act 2000 which provides that a local area plan may be prepared in respect of any area which a planning authority considers suitable. Mr. McCarthy exhibited a copy of the 2009 LAP and it is not in dispute that some 90 acres of the Applicant’s lands were zoned under the said Plan. The very last page comprises a Kildare County Council planning department map, dated 26 January 2009, entitled “Sallins Local Area Plan Zoning Map”. This shows the 90 acres of the Applicant’s lands, extending north from the town of Sallins and indicates the then zoning as follows. The lands coloured brown and marked “B” were zoned “New Residential” and this comprised 30 acres. The lands on the map coloured blue and marked “E” were zoned “Community and Educational” and comprised 10 acres. The lands coloured dark green marked “F” were zoned “Open Space and Amenity” and comprised 30 acres. The lands coloured in pale green and marked “I” were zoned “Agricultural”. This comprised 20 acres. Later in this judgment, I will look at the sequence of events by which the Applicant’s lands came to be zoned in the 2009 LAP, in circumstances where these lands were not zoned in the draft of the 2009 LAP as originally produced.
16. On internal p. 7 of the 2009 LAP, specific reference is made to “The Regional Planning Guidelines for the greater Dublin area 2004 – 2016” which establish a broad planning framework for the greater Dublin area comprising two regions, namely, the Metropolitan area and the Hinterland area. Para 2.2 states inter alia: -

“Sallins is located in the Hinterland area. Sallins is designated as a small growth town”.

17. Paragraph 2.3 goes on to refer to the Kildare County Development Plan 2005 – 2011 and it is stated that the foregoing sets the broad development framework for the county of Kildare and the development areas within its jurisdiction. The strategic objectives of the Kildare Development Plan 2005 – 2011 are referred to. It is not in dispute that, during the period of the Sallins LAP 2009, specifically from 2009 to 2015 inclusive, no residential development took place on the 30 acres of the Applicant’s lands which are at the heart of the present proceedings. I will look at certain contents of the 2009 LAP in due course.

The Kildare County Development plan 2011 – 2017

18. The Kildare County Development Plan 2011 – 2017 (“KCDP 2011 – 2017”) is the successor to the Kildare County Development plan 2005 – 2011. In his affidavit of 14 November 2016, Mr. McCarthy exhibits a copy of same. Chapter 2 of the KCDP 2011 – 2017 is entitled “Core Strategy”. The contents of the Core Strategy of the KCDP 2011 – 2017 are of particular relevance to the present proceedings. Key issues in these proceedings concern the extent to which the contents of the LAP, which the elected members adopted for Sallins at a meeting held on 09 March 2016, was or was not consistent with the contents of the KCDP 2011 – 2017 and its Core Strategy and whether the Respondent Minister was entitled to form the opinion that it was inconsistent. Therefore, it is essential to look closely at the KCDP 2011 and at the Core Strategy set out therein.

The “Core Strategy” in the KCDP 2011 - 2017

19. Para. 2.1 of the Core Strategy, under the heading “Background” states the following:-

“The overall core strategy for Co. Kildare builds on the principles established in the previous Kildare County Development plan 2005 – 2011 and the framework provided by the National Spatial Strategy (NSS) 2002 – 2020 and the Regional Planning Guidelines for the greater Dublin area (RPG) 2010 – 2022. It sets out a strategic approach to the management of development in the county. This is expanded upon in the policies and objectives contained within the remainder of this Plan”.

Information is then set out under various headings as follows:-

- “2.2 Strategy;
- 2.3 Kildare in context;
- 2.4 Planning policy zones – regional context;
- 2.5 Settlement hierarchy regional context;
- 2.6 SEA and the settlement strategy;
- 2.7 Preferred development strategy;
- 2.8 Future population growth and housing targets;

- 2.9 Employment trends in Kildare;
 - 2.10 Overall economic strategy;
 - 2.11 Sectoral Strengths;
 - 2.12 Future trends
 - 2.13 Creation of sustainable and integrated communities;
 - 2.14 Balancing the environment with sustainable and appropriate development;
 - 2.15 Delivering the core strategy".
20. On internal p. 18 of the KCDP 2011 – 2017, under the heading "2.4 Planning Policy zones – regional context", the following is stated: -
- "The strategic planning framework of the Regional Planning Guidelines 2010–2022 (RPGs) identifies planning policy zones supported by a settlement hierarchy. Two strategic planning policy zones are defined in Kildare under the RPGs (refer to Map 2.3). These comprise the Metropolitan Area and the Hinterland Area. . . .
- These planning policy zones are supported by a settlement hierarchy with the identification of key growth towns to be consolidated, developed and supported within a sustainable urban form. Map 2.3 illustrates the RPG settlement strategy including the Metropolitan and Hinterland Areas".
21. Para 2.5 of the "Core Strategy", in chapter 2 of the KCDP 2011 – 2017, states the following, on internal page 18: -
- "2.5 Settlement Hierarchy Regional Context
- The settlement strategy of the Regional Planning Guidelines (RPGs) ranks settlements in the county from large growth towns to moderate sustainable growth towns. At the lower level of settlement each Local Authority within the GDA should define small towns / villages as part of the development plan process.
- 2.5.1 Settlement Hierarchy – Defining Principles
- The principles governing the categorisation of each settlement type are summarised in the following paragraphs followed by Table 2.2 which identifies the overall settlement hierarchy for County Kildare".
22. Information is then given under the heading "Large Growth Towns" followed by "Moderate Sustainable Growth Towns" and para. 2.5.1 continues on internal p. 20 as follows:-
- "Small Towns within the Hinterland Area are not listed under the RPGs. Such centres are to comprise populations of between 1,500–5,000 with relatively small and locally financed businesses. In terms of facilities, the RPGs recognise that small

towns contain retail facilities mainly in the convenience category, and services such as primary school(s), secondary school(s), health clinic(s) and sports facilities”.

23. Internal p. 20 of the KCDP 2011 – 2017 also contains, inter alia, “Table 2.2 Settlement Hierarchy and Typology, Co. Kildare”. This table provides information under the headings “Hierarchy”, “Description” and “Locations”. The Hierarchy is specified to be “Large Growth Towns I”, “Large Growth Towns II”, “Moderate Sustainable Growth Towns”, “Small Towns”, and “Villages”. Sallins is designated as one of the “Small Towns”, along with Clane, Prosperous, Rathangan, Athgarvan, Castledermot, Derrinturn and Kill. The foregoing is of some significance in the present case. It is incontrovertibly a matter of fact that, when the elected members adopted the Sallins LAP on 09 March 2016, the designation of Sallins under the KCDP 2011 – 2017 was that of “Small Town”.
24. On internal p. 29 of the KCDP 2011 - 2017, the following is stated under the heading “Delivering the Core Strategy”: -

“2.15.1 Settlement Strategy.

It is the policy of the Council:

CS 1: To provide new housing provision in accordance with the County Settlement Hierarchy.

CS 2: To direct appropriate levels of growth into the designated growth centres and moderate sustainable growth towns.

CS 3: To support rural communities through the identification of lower order centres including small towns, villages and settlements to provide more sustainable development centres in the rural areas.

CS 4: To deliver sustainable compact urban areas through a plan-led approach”.

The Settlement Strategy in accordance with the Core Strategy

25. Chapter 3 of the KCDP 2011 – 2017 comprises the “Settlement Strategy” and internal p. 32 contains inter alia the following:-

“3.1 Background

A settlement strategy is a spatial expression of population distribution, settlement size, settlement role and settlement hierarchy. The settlement strategy in this Plan provides a strategic direction to the management of growth, investment and resources in accordance with the core strategy outlined in Chapter 2.

This chapter accords with the overarching strategic policies of the Regional Planning Guidelines (RPGs), whilst having regard to key planning considerations including infrastructure provision and environmental protection. This Plan proposes a

structured approach to spatial planning and a settlement strategy founded on a well-developed urban structure supporting diverse rural areas.

The strategy is based on the consideration of environmental sensitivities, survey work and the level of existing and proposed physical and social infrastructure. It seeks to strengthen the urban fabric of the county, with an emphasis on building critical mass in key towns. Rural populations will continue to be supported through the settlement centres and through a sustainable approach to maintaining rural economy and population, balanced against responsible environmental protection”.

The Settlement Hierarchy

26. Internal p. 33 of the KCDP 2011 – 2017 sets out the following under the heading “3.3 Settlement Hierarchy”: -

“A settlement hierarchy is set out to underpin decisions about the location and scale of new developments such as housing, employment creation and social and physical infrastructure provision. Investment in infrastructure should be focused on locations that are the most environmentally robust and provide the best economic return.

The core strategy set out in Chapter 2 is key to influencing the recommended settlement hierarchy. National and regional planning policy documents referenced in Section 1.4.1 and the environmental sensitivities referred to in Section 2.6 have informed the ‘Preferred Development Strategy’ for the county, as detailed in Section 2.7. The Preferred Development Strategy forms the basis for the settlement hierarchy set out in this chapter.

An analysis of the capacity of towns and villages throughout the county to accommodate future growth has been carried out. The key issues examined in determining the capacity of each settlement for development include the following:

- Strategic Environmental Assessment of this Plan.
- RPGs for the Greater Dublin Area 2010–2022.
- Existing population base.
- Level of social infrastructure.
- Level of physical infrastructure.
- Environmental constraints.
- Settlement form.
- DoEHLG Sustainable Residential Development in Urban Areas and accompanying Urban Design Manual (2009).

Arising from the foregoing considerations, the settlement hierarchy for County Kildare is outlined in Table 3.1. A total of 74 settlements have been included ranging from large growth towns to small rural nodes. Map 3.1 illustrates the spatial pattern of the settlement hierarchy. The key principles governing the designated role of each settlement category are set out in Section 3.4”.

Designation of Sallins as a "Small Town" in the KCDP 2011 - 2017

27. Table 3.1 entitled "County Kildare Settlement Hierarchy 2011-2017" can be found on internal p. 34, of chapter 3, Settlement Strategy, of the KCDP 2011 - 2017. It echoes the information set out in Table 2.2 on internal p. 20. It lists information under two headings namely "Settlement Category" and "Designated Settlement". The relevant entry insofar as this case is concerned is as follows: -

"Settlement Category	Designated Settlement
Small Towns	Clane, Sallins, Kill, Prosperous, Rathangan, Athgarvan, Derrinturn & Castledermot"

The foregoing is followed, on internal p. 35, by Map 3.1 entitled "Settlement Hierarchy Map". A legend appears on this map which denotes the following: "Large Growth Town I, Large Growth Town II, Moderate Growth Town, Small Town, Village, Rural Settlement, Rural Node, Metropolitan Area and Hinterland Area". Sallins is designated as a "Small Town", being within the Hinterland Area.

The role of Small Towns within the settlement hierarchy

28. Section 3.4, beginning on page 36 of the KCDP 2011 - 2017, explains the designated role of each settlement category within the hierarchy. Section 3.4.1. deals with the "Role of Large Growth Towns I and II", whereas 3.4.2 deals with the role of "Role of Moderate Sustainable Growth Towns". With regard to the role of Small Towns, the County Plan states the following on internal p. 36:-

"3.4.3 Role of Small Towns

Small Towns within the Hinterland area generally comprise populations of between 1,500-5,000. Their role is to develop as key local centres for services with levels of growth to cater for local need at an appropriate scale and to support local enterprise to cater for local demand. The rate of growth will be controlled to limit pressure on services, the environment and unsustainable commuting patterns. The future development of small towns will be guided by an appropriate planning framework local area plan as deemed appropriate". (emphasis added)

The Link between population and designation within the Settlement Hierarchy

The word used in section 3.4.3 is "*generally*", not "*exclusively*". It is plain from the foregoing that, although population plays a role in a settlement's designation, a settlement with somewhat more than 5,000 does not cease to be designated a Small Town. Nor does the County Development plan state that, if the population exceeds 5,000, a Small Town automatically moves up the ladder in the settlement hierarchy and becomes something else or can be thought of as something else (e.g. a Moderate Sustainable Growth Town or otherwise). In short, the designation of Sallins as a Small Town is clear and is a matter of fact. That was the position throughout the currency of the KCDP 2011 - 2017.

The "Sequential Approach" to development as set out in the KCDP 2011 - 2017

29. The Settlement Strategy in Chapter 3 of the KCDP 2011 – 2017 states inter alia the following on internal p. 37: -

"3.4.6 Sequential Approach

All towns, villages, settlements, rural nodes (as appropriate) shall be developed in a sequential manner, with suitable undeveloped lands closest to the core and public transport routes being given preference for development in the first instance. Zoning shall extend outwards from the centre of an urban area with strong emphasis placed on encouraging infill opportunities. Areas to be zoned should generally be contiguous to existing zoned development lands."

The foregoing clearly echoes the contents of the Respondent Minister's 2007 Guidelines.

Housing and Population Allocations in the KCDP 2011 - 2017

30. Pages 37 and 38 of the KCDP 2011 – 2017 go on to deal with housing and population growth targets and state, inter alia, the following:-

"3.5 Housing and Population Allocation

Chapter 2 outlines the RPGs housing and population growth targets for the county between two periods, 2006–2016 and 2016–2022. Given this Plan period runs to 2017, all figures and targets set out for the settlement strategy have been calculated for 2006–2017.

The population target for the county is 237,458 persons by 2017, giving rise to the need for 27,982 additional residential units. This population growth equates to an increase of 27% over the Plan period resulting in an average of 2,544 units to be delivered per annum. . . .

The distribution of housing units over the plan period is in accordance with the Core Strategy for the county and the population and unit allocations for each category in the hierarchy are outlined in Table 3.2. It should be noted that in calculating unit projections, the RPGs apply a standardised vacancy rate of 6.5% to reflect the need for the market to operate efficiently and to allow for the normal turnover of the housing stock.

In the RPGs the four Metropolitan towns of Maynooth, Celbridge, Leixlip and Kilcock are designated a minimum of 35% of the total population/ unit growth rate allocation for the county. If this target is achieved, it will increase their share of the total population in the county from 25% in 2006 to 29% in 2017.

The RPGs objective is to allocate growth within the Hinterland towns of Naas and Newbridge and to consolidate growth in Kildare, Athy, Monasterevin and Kilcullen. This is achieved by allocating a minimum 32.5% of the total growth rate for the county to these towns. This will increase their share of the total population in the county from 32% in 2006 to 34% in 2017 . . .

Table 3.3 lists the percentage allocation of growth in the various towns, villages and settlements in Kildare. *Expansion in small towns is managed by allocating a total of 9% of the total population / unit growth rate allocation for the county to these settlements. This will retain the 10% share of the total population in the county in these towns as per 2006.* The remaining 17% of the total population / unit growth rate is allocated to the rural hinterland with 2% designated to rural settlements and rural nodes and 15% allocated to the wider rural area.

The percentage of the population residing in the county's towns and villages will continue to increase over the period of this Plan. While the relative population numbers living in rural settlements and the rural countryside is planned to fall, the absolute numbers in these areas is expected to increase, comprising 16.9% of the overall projected growth over the Plan period". (*emphasis added*)

Table 3.3 in the KCDP 2011 – 2017 – Population and Housing allocations

31. Internal p. 39 of the KCDP 2011 – 2017 contains Table 3.3 which is entitled "Settlement Hierarchy – Population and Housing Unit Allocation 2006 – 2017". This table allocates specific population targets and housing unit targets to each settlement type within the settlement hierarchy. Table 3.3 sets out information in relation to the 2006 population census and the percentage of allocated growth for the period 2006 – 2017 in respect of each settlement type. Among other things, Table 3.3. records the total county population as per the 2006 census as 186,335 and specifies the 2017 population target as being 237,458 for Co. Kildare. The county total in respect of target housing units for 2006 – 2017 is specified to be 27,982. This total is very clearly broken down in the penultimate column of Table 3.3, by way of allocations between the single "Large Growth Town I", the three towns of the settlement type "Large Growth Town II", the six towns designated "Moderate Sustainable Growth Towns", the eight "Small Towns", the eleven "Villages", the 21 "Rural Settlements", and the 23 "Rural Nodes".

Specific population and housing unit targets for Sallins in Table 3

32. The specific population target and housing unit target, for 2006 – 2017, in respect of Sallins are clear from the following entries which appear in table 3.3 of the KCDP 2011 - 2017:-

Settlement Type	Towns/Villages
Small Towns	Sallins
2006 Pop Census	3,806
2017 Pop Target	4,550
2006 – 2017 Housing Units Target	527
Percentage of Allocated Growth	1.9%

It is clear from the foregoing, that the KCDP 2011 – 2017 allocated 527 units as the Housing Unit Target for Sallins in respect of the period 2006 – 2017. This is a key fact insofar as the present proceedings are concerned.

Development Capacity and the concept of “over provision” up to an additional 50%

33. Section 3.6 on internal p. 40 of the KCDP 2011 – 2017 addressed the issue of “Development Capacity”, beginning as follows: -

“3.6 Development Capacity

In order to implement the settlement strategy of this Plan, an understanding of the existing development capacity within each of the designated towns and villages is required. . . .

The figures set out in Table 3.3 are the targeted population/housing unit growth rates for towns, villages and settlements for the plan period. Paragraph 4.1.4 of the DoEHLG’s Development Plan Guidelines for Planning Authorities (2007) recognises the need for planning authorities to prepare development plans that allow for residential needs of nine years (i.e. up to an additional 50% of the targeted growth rate). This over provision is set out in order to ensure continuity of supply of residential lands and an element of choice. In implementing the County Development Plans targeted growth figures, relevant Village Plans, LAPs and Town Plans will provide sufficient land zonings in accordance with these ministerial guidelines or any subsequent revisions to these guidelines”.

34. The foregoing is of some significance in the present case. In short, the KCDP 2011 – 2017 explicitly recognises that additional “headroom” can be built into a development plan by way an over provision of residential zoning. This is not, however, without limit. Having regard to the 2007 Guidelines, over-zoning can be up to an additional 50% of the targeted growth rate.

The KCDP 2011 - 2017 and targeted residential development in Sallins – Table 3.5

35. It is clear that the Settlement Strategy set out in the KCDP 2011 – 2017 took account of an assessment in relation to the surplus or deficit for the targeted development of residential housing units in designated towns in respect of the period 2006 – 2017. Table 3.5, on page 42 of the KCDP 2011 – 17 is entitled “An Assessment of the Current Surplus/Deficit for Targeted Unit Growth in Designated Towns 2006–2017”. When the said County Development Plan was produced, the then current LAP in respect of Sallins was the 2009 LAP. The entries in Table 3.5 specify what was described as a “New Units Target 2006 – 2017” of 527 for Sallins. This is, of course, precisely the same 527 target which appears in Table 3.3 (internal p. 39 of the KCDP 2011 – 17). Table 3.5 records the “Potential units deliverable” as being 1,099 units. This figure is based on the then most current local area plan, being the Sallins LAP 2009. It is made clear in footnote no. 5 that the calculation of 1,099 potential units deliverable is “On lands currently zoned which are undeveloped”. The result of the foregoing is a surplus of 572 residential units, having regard to the housing Unit Target allocated in respect of Sallins.

Settlement Strategy Policies in the KCDP 2011 - 2017

36. Internal page 42 of the KCDP 2011 – 2017 states as follows under the heading “3.8 Settlement Strategy Policies”: -

“It is the policy of the Council:

SS 1: To manage the county’s settlement pattern in accordance with the population and housing unit allocations set out in the RPGs, the settlement strategy and hierarchy of settlements set out in Table 3.1. To direct growth into the large growth towns, followed by moderate sustainable growth towns and small towns, whilst also recognising the settlement requirements of rural communities.

SS 2: To ensure that the zoning of lands is in accordance with the county settlement strategy.

SS 3: To phase lands for development where over zoning has taken place. Prioritised phasing will be based on a clear sequential approach with the zoning extending outwards from the town/village core. A strong emphasis will also be placed on encouraging infill opportunities and better use of underutilised lands with options and opportunities for brownfield / regeneration prioritised. . . .

SS 5: To implement through appropriate policies, the principles and guidance set out in the DoEHLG *Guidelines Sustainable Residential Development in Urban Areas (May 2009)* and accompanying *Urban Design Manual – A Best Practice Guide (May 2009)* in the preparation and review of town, village and settlement plans”.

Settlement Strategy Objectives

37. The foregoing is followed, on internal p. 43 of the KCDP 2011 – 2017, by s. 3.9 entitled “Settlement Strategy Objectives”. This states, inter alia, the following:-

“It is an objective of the Council: . . .

SO 4: To ensure that the scale and form of developments envisaged within towns and villages is appropriate to their position within the overall settlement hierarchy set out in Table 3.1 (Settlement Hierarchy). Due regard will be given to the DoEHLG *Guidelines Sustainable Residential Development in Urban Areas (May 2009)*, the accompanying *Urban Design Manual – A Best Practice Guide (May 2009)* and the Urban Design Guidelines contained within Chapter 15 of this Plan.

SO 5: To implement Section 10(8) of the Planning and Development Act 2000 as appropriate which states “*there shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan*”.

Certain facts in relation to the Applicant’s lands

38. At this juncture it is appropriate to refer to certain facts concerning the relevant lands at the heart of the present proceedings. The 90-acre site, owned by the Applicant, which

was zoned in the Sallins LAP 2009 are located to the north of the town of Sallins. Having regard to the evidence, I am satisfied that the following are also facts in relation to the Applicant's lands. They are located to the east of the R407. The lands currently have an agricultural use. The lands abut the rear of a residential development to the south. The lands are crossed by power lines that converge at a 38KW substation sited on the west of the lands and adjoin the R407. The foregoing facts are averred in para. 47 of the affidavit of Mr. Cussen sworn 20 February 2017. No issue is taken in relation to these facts in the replying affidavit sworn by Mr. McCarthy on 11 October 2018. Furthermore, in para. 23 of his affidavit sworn 18 December 2018, on behalf of the Respondent, Mr. Stewart Logan, planning adviser, makes a number of the averments in relation to the Applicant's lands which were the subject of Material Alteration 20, namely the lands proposed for residential development, and I am satisfied that they accurately reflect the factual position. The relevant averments include: -

"...I say that the lands the subject of MA20 are: -

- (a) Positioned (to the north) abutting the rear gardens of existing homes in the "Sallins Park" residential estate but with no potential means of road access from that existing development due to the configuration of established private homes/garden areas;*
- (b) Could only be potentially accessed from the nearest public road (R407 Clane road to the west) by means of the construction of a new road of minimum 350m length;*
- (c) Such an access point on the Clane road would be more than 600m north of the available zoned development sites of C5, C6 and K1 in the LAP which enjoy road frontage directly to the R407 including existing drainage services potential..."*

No evidence was adduced from which I could conclude that the foregoing is not factually correct in respect of the Applicant's lands

The sequence of events by which the Applicant's lands were zoned in the 2009 LAP

39. It is not in dispute that the local authority adopted the Sallins 2009 LAP on 26 January 2009. Nor is it in dispute that some 90 acres of the Applicant's lands were zoned in the 2009 LAP for Sallins, including, in particular, some 30 acres which were zoned Residential marked "B" and coloured brown on the "Land Use Zoning Objectives Map" dated 26th January 2009 which appears in the 2009 LAP. It is also a matter of fact that the Applicant's 30 acres were *not* zoned for residential purposes in the *draft* LAP which was originally prepared in 2008. The reason the Applicant's 30 acres were zoned for residential development in the 2009 LAP is because the elected members adopted a material alteration (described at the time as "material alteration No. 6"). It is also clear from the evidence that, prior to the adoption of the 2009 Sallins LAP, the Respondent had concerns in relation to what was then the proposed zoning of the Applicant's lands for residential development. The basis for the Respondent's objection included, firstly, the

absence of a proven need to zone additional land for residential purposes; secondly, that it would amount to overzoning which was not in line with the 2007 Guidelines; and thirdly, what was described as the relatively peripheral location of the Applicant's lands. The foregoing can be seen from a letter dated 22 January 2009 sent by a Mr. Patrick O'Sullivan, Spatial Policy Section, to Ms. Mary Foley, Administrative Officer, of the Notice Party's Forward Planning Section, to which I now turn.

The Respondent's 22 January 2009 submission that the Applicant's lands should not be zoned for residential development

40. In his affidavit sworn on 4 April 2017, Mr. Michael Kenny exhibits a copy of the aforesaid 22 January 2009 letter which contains submissions on behalf of the Respondent, as follows: -

"Re: Material Alteration to the draft Sallins Local Area Plan 2009 – 2014.

Dear Ms. Foley,

I wish to refer to the above which the Department understands was on public display towards the end of 2008 and set out hereunder observations for consideration by the council.

The Department notes the proposed material alterations and has concerns regarding the residential zoning aspect of the material alteration No. 6. The Department is of the view that there is no proven need to zone an additional 12.14 ha (30 acres) of land for residential purposes. The target population for Sallins in 2014 is 5,038. The existing residential zoned land has a potential population of 6,293, namely 1,255 above the target population.

The proposed additional 12.14 ha would provide for about 1,070 additional people which would mean that there would be residential land zoning for about 2,325 people above the target population. It should be noted that such a level of overzoning is not in line with the guidance provided in the Development Plan Guidelines (2007).

The Department is also concerned that the additional residential land is in a peripheral location and somewhat distant from the Town Centre zoned land and away from the rail station. Planning policies in the Development Plan Guidelines, the National Spatial Strategy (2002), draft Sustainable Residential Development Guidelines (2008), the Greater Dublin Area Regional Planning Guidelines (2004) and in other national policy documents indicates a need to create more compact urban settlements and to promote the use of public transport. The zoning of residential land in the proposed location would be contrary to such guidance and overall national development objectives".

41. It is of significance to note that, as of 22 January 2009, when the aforesaid letter was sent by the Respondent to the Notice Party, the Respondent did not have the power to

issue a Direction in respect of a Local Area Plan, of the type challenged in the present proceedings.

The Applicant's lands and the Sallins draft LAP of June 2015

42. It is not in dispute that a draft Sallins Local Area Plan 2016 – 2022 was published in June 2015 (the draft LAP of June 2015). This zoned some 28 acres of the Applicant's lands as "Industry and Warehousing" and the balance of the Applicant's lands were not zoned. Thus, none of the Applicant's lands were zoned for residential development. Page 12 of the draft LAP of June 2015 stated, inter alia, the following: -

"The quantum of residentially zoned lands in the Sallins Local Area Plan 2009 exceeds the target set in the core strategy of the Kildare County Development Plan 2011 to 2017. Sites with a valid planning permission will remain zoned in this plan while a small quantum of additional lands for residential purposes will be provided to cater for future housing needs. Lands which are not required for the housing target will be appropriately rezoned".

Internal page 13 of the draft LAP of June 2015 stated, inter alia, the following -

"The quantum of lands zoned for residential purposes in the previous 2009 LAP exceeded the demands over the life of that plan. The county settlement strategy figures stipulates that a maximum of 137 additional units (excluding those permitted but not built) are required for residential purposes over the lifetime of this LAP.

The County Settlement Strategy sets out a new housing unit target for Sallins over the period 2006-2017. The unit target figure also needs to account for residential units built from 2006-2015 and for un-built units with valid planning permissions. Table 3 summarises the calculations discussed in the remainder of this section.

The county settlement strategy has set out a target of 531 new housing units (please refer to Chapter 3, Settlement Strategy of the Kildare CPD 2011 - 2017) to be provided for within Sallins over the period 2006-2017. This equates to 1.9% of the total residential unit growth target for the entire county for this period. The Regional Planning Guidelines have allocated an annual target of 3,122 units for the county over the period 2016-2022. Sallins' allocation for 2018-2022 is therefore calculated as 1.9% of this annual county target (59 units x 4 yrs). Adding this to the 2017 housing unit target (531 units) gives a revised target of 767 new housing units for Sallins for the plan period 2006- 2022.

A total of 565 residential units have been constructed in the town over the period 2006-2015 resulting in target of 203 units for the period 2015- 2021. As advocated in the 'Development Plan Guidelines for Planning Authorities', issued by the Department of the Environment Heritage and Local Government (2007), overzoning of one third to one half is acceptable to ensure that housing targets are met. The LAP housing target increases to 304 units when an additional 50% overzoning is

applied. Regard must also be had to the 147 un-built units with valid permissions currently in existence. Taking these permissions away from the LAP target leaves a remaining target of 137 units for the period 2015 – 2021.

The quantum of land required to meet the unit target of 240 units will be dependent on the location and density of development. The location and category of land use zonings will allow for different residential densities”.

Overzoning of 50% included in the draft LAP of June 2015

43. Internal pages 14 and 15 of the draft LAP of June 2015 contain, inter alia, three tables as follows: -

- “Table 3 Sallins Housing Unit Target 2015-2021”;
- “Table 4 Quantum of Land Required to Meet the Unit Target”;
- “Table 5 Quantum of New Residential Land (Zoned C) within the Plan”.

It is not in dispute that Table 5 on internal p. 15 of the draft Sallins LAP of June 2015 did not refer to the Applicant’s lands and the said draft, as published, did not propose that any of the Applicant’s lands be zoned Residential. It is a matter of fact that the draft LAP published in June 2015 referred, inter alia, to the targets which were set out in the “parent” county development plan, and set out a methodology for meeting those targets, without the Applicant’s lands being necessary to meet those targets, as regards residential development units. It is also a fact that the said draft addressed the concept of acceptable overzoning, being of one third to one half, in order to ensure that housing targets are met and the draft plainly applied an additional 50% in terms of overzoning, consistent with the 2007 Guidelines, to which I have referred above. Elsewhere in this judgment I explain how the contents of “Table 5” changed, over time, in response to decisions made by the elected members up to the point at which the LAP was adopted on 9 March 2016 and thereafter amended in response to the Respondent’s 8 August 2016 Direction.

Phased development

44. A related principle to that of acceptable overzoning is that of phased development. The manner in which phased development is proposed is made clear on internal p. 16 of the draft LAP of June 2015, as is the importance of the LAP being in compliance with the core strategy and the settlement strategy set out in the parent county development plan, being KCDP 2011 – 17. This is clear from the following statement which can be found in internal p. 16 of the draft LAP of June 2015 (exhibit NC5 to Mr Cussen’s 20 February 2017 affidavit): -

“It is the policy of the Council:

HP 1: To facilitate the sustainable development of lands in Sallins for residential use in accordance with Section 8.2.1 to ensure compliance with the core strategy and the

settlement strategy set out in Kildare County Development Plan 2011 to 2017, or any future plan.

Note:

In the event that permissions expire on existing zoned residential lands designated as Phase 1 consideration may be given to development of Phase 2 lands which are sequentially close to the town and are adequately serviced by appropriate infrastructure. The remaining Phase 2 lands will not be eligible for development until such time as Phase 1 lands are developed appropriately or until the review of this LAP through the statutory process reflects any change to the Core Strategy set out in the CDP. The inclusion of new residential Phase 2 lands within this LAP will not in any way infer a prior commitment on the part of the Council regarding their future zoning for residential purposes. Any future amendment or review of the Sallins LAP will be subject to Strategic Environmental Assessment (SEA), Appropriate Assessment(s) (AA) and Flood Risk Assessment as required under the relevant legislation . . .”.

5 August 2015 Submission by the Respondent

45. It is not in dispute that the Respondent made a submission to the Notice Party in relation to the then – draft Sallins LAP, by means of a letter dated 5 August 2015 sent by Mr. Niall Cussen, principal advisor, forward planning section. Mr. Cussen has exhibited a copy of the said letter which made submissions under the headings “Flood Risk Assessment”, “Housing Land & Unit Requirements to 2021”, “Retail Development” and “Infrastructure”. The Respondent’s submission noted, inter alia, that housing estimates had not been provided in relation to certain lands in the draft LAP, which sites were labelled “A: Town Centre” and “K: Commercial/Residential”. The Respondent requested the Notice Party to provide housing estimates and requested that the overall housing unit target be outlined clearly. This submission by the Respondent was subsequently analysed in an 11 September 2015 report by the Chief Executive of the Notice Party, as I will explain later in this judgment when discussing that report.

11 August 2015 submission by David Mulcahy Planning Consultants

46. A submission was also made by David Mulcahy Planning consultants on behalf of McCarthy Meats Processing Limited. The latter is a limited liability company which operates from the same registered address as the Applicant. It is not disputed that Mr. Seamus McCarthy, who swore the verifying affidavit on behalf of the Applicant, is director and secretary of McCarthy Meats Processing Limited. In essence, the submission on behalf of McCarthy Meats Processing Limited proposed that the zoning of the Applicant’s lands be as per the Sallins LAP 2009 and that, if its submission was accepted, 40 acres of land would be transferred, without charge, to the community, for amenity purposes. It was not made clear, at the time, that McCarthy Meats Processing Limited is not the owner of the relevant lands which, according to averments by Mr. McCarthy, belong to the Applicant. None of the affidavits before the court exhibited any formal agreement entered into, at the time, between the Notice Party and either McCarthy Meats Processing Limited and/or the Applicant with regard to the transfer of land. It is appropriate to look in some

detail at the contents of the submission, dated 11 August 2015. The introduction to the submission begins as follows: -

“David Mulcahy Planning Consultants Ltd have been instructed by McCarthy Meats Processing Ltd. Of Clane, Co. Kildare to make a submission in respect of the Draft Sallins Local Area Plan 2015 – 2021.

The submission relates to lands measuring approx. 100 acres [approx. 40 hectares] located at Bodenstown, Sallins, Co. Kildare. McCarthy Meats Processing Ltd. have freehold title over the lands in their entirety.

The existing zoning objectives for the subject lands under the current Sallins LAP 2009 – 2015 have been significantly changed in the draft Sallins LAP 2015 – 2021. The existing “Residential” zoning has been omitted from the draft LAP in its entirety and the Community/Educational and Open Space/Amenity zonings have been replaced with an “Industrial and Warehousing” zoning objective.

The submission seeks to broadly retain the existing zoning objectives as per the Sallins LAP 2009 – 2015 which were previously adopted by the council and make far more sense having regard to the proper planning and sustainable development of the area. The current zonings have the potential to yield a sports and education complex in the same manner as Athy College within walking distance of a high quality residential area. The zonings have been slightly amended to include the addition of 10 additional acres which will be transferred free of charge to the community in the same manner as the 30 acres of amenity lands under the 2009 LAP, i.e. 40 acres in total. . .”.

47. It is clear from the foregoing that McCarthy Meats Processing Limited gave instructions to David Mulcahy Planning Consultants to make submissions on its behalf. Mr. Seamus McCarthy is, without doubt, a director of McCarthy Meats Processing Limited. The said company held itself out as being the freehold owner of the entire lands which are the subject of the present proceedings. I am entitled to conclude, on the evidence, that Mr. Seamus McCarthy was aware of the contents of the submission furnished on 11 August 2015 on behalf of McCarthy Meats Processing Limited. A fundamental assertion in that submission was that McCarthy Meats Processing Limited owned the relevant lands. Notwithstanding the foregoing, Mr. Seamus McCarthy avers, in para. 4 of his 3 November 2016 affidavit, that McCarthy Meats Limited is the owner of the relevant lands. Mr. McCarthy is also a director of McCarthy Meats Limited, the Applicant in these proceedings. If, as averred by Mr. McCarthy, the Applicant is the owner of the relevant lands, it has not been explained to the court why a different company, of which Mr. McCarthy is also a director, made a submission, via a firm of professional planning consultants, which wrongly asserted ownership. I am, however, entirely satisfied that, on receipt of the submission, there was no obligation on the Notice Party to look behind the assertion made as to ownership of the relevant lands. Nor is there any evidence before the court to the effect that the Notice Party knew or ought to have known that there was an error, in respect of ownership, contained in the submission. As well as being entitled to conclude,

on the evidence, that Mr. Seamus McCarthy was aware of the contents of the submission made on behalf of McCarthy Meats Processing Limited, there is no evidence that that McCarthy Meats Limited wished to make any, or any other or different, submission or that McCarthy Meats Limited were prevented from making any submission at any point.

No planning history associated with the Applicant's lands

48. Among other things, the submission of 11 August 2015 confirmed that there is no planning history associated with the relevant lands. This is clear from s. 3 on internal p. 13 of the submission which states the following: -

"3.0 PLANNING HISTORY

3.1 Subject Lands

There is no planning history associated with the subject lands.

The existing zoning objectives were not acted upon during the current Sallins LAP due to the economic downturn however, there was considerable interest in the residential zoned lands in the past year from developers.

SUMMARY

There is no planning history associated with the subject lands".

49. Internal p. 2 of the 11 August 2015 submission comprises an Executive Summary. The first two bullet points in the Executive Summary are as follows: -
- The draft LAP incorrectly identifies Sallins as a Small Town; the town's population in excess of 5,000 since 2011 means that it should be recognised as a Moderate Sustainable Growth Town with associated increased growth levels.
 - The future population growth of Sallins should reflect its unique characteristics in the form of a centrally located train station, its proximity to the motorway, and its proximity to employment opportunities in Naas; it has the capacity to cope with increased growth compared to other towns in the county".
50. Certain comments can be made in relation to the foregoing. To suggest that the draft LAP "incorrectly" identifies Sallins as a Small Town is simply wrong. It was the case then, and remains a matter of fact, that Sallins was designated a "Small Town" in the parent county development plan. The second bullet point in the submission of 11 August 2015, regarding the supposed capacity of Sallins to increase to cope with increased growth, makes no reference to the fact that Sallins already had a very specific growth allocation attributed to it in the county development plan. That specific allocation is not referred to in the submission.

Similarities between the contents of the 11 August 2015 submission and the document entitled "Key planning arguments in favour of amendment no. 20"

51. Later in this judgment, I will examine events of 9 March 2016 when a Special Meeting took place of Naas Municipal District. Detailed minutes exist in relation to that meeting, behind which minutes appears a document entitled: "*Key planning arguments in favour of amendment no. 20*". For present purposes, I note the fact that the first bullet point in the 11 August 2015 submission is repeated, verbatim, in paragraph 1 of the document entitled "*Key planning arguments in favour of amendment no. 20*" (save for the fact that the word "draft" in the former, has been changed to the word "current", in the latter). It is also a fact that the wording used in the second bullet point of the 11 August 2015 submission is replicated, verbatim, in the second paragraph of the document entitled "*Key planning arguments in favour of amendment no. 20*", which appears behind the minutes of the special meeting of Naas Municipal District, dated 9 March 2016. The following wording, contained in the executive summary of the 11 August 2015 submission by David Mulcahy Planning Consultants Limited is also repeated, verbatim, in the one – page document entitled "*Key Planning Arguments in Favour of Amendment no. 20*" upon which the elected member appear to have relied: -

- "Much of the lands identified in the draft LAP for New Residential development are subject to flood risk assessments so there is no guarantee that they will suitable for development";
- "The draft LAP specifically notes that the town park objective to the west of the town is a long – term objective . . .";
- "the Educational/Community zoning to the north of the town is on private owned lands which the draft LAP recognises was a problem in realising the previous town park objective . . .".

52. Section 10 of the 11 August 2015 Submission begins as follows: -

"10.0 PROPOSED ZONING: -

10.1 Introduction

This submission seeks the retention of the existing zoning objectives under the current Sallins LAP 2009 – 2015.

There does not appear to be any valid justification for removing the entire zoning objectives in this north – eastern area of the town within only 6 years of having been adopted by the council on the basis of representing proper planning and sustainable development . . .".

53. It is plain from the foregoing that the planning consultant was suggesting, inter alia, that the fact certain of the Applicant's lands were zoned for New Residential development in the 2009 Sallins LAP meant that such zoning then represented, and continued to represent, proper planning and development. A number of observations can be made in

relation to that submission. Firstly, it is a matter of fact that, in the draft published in 2008 of what became the 2009 Sallins LAP, the Applicant's lands were *not* zoned for residential development. Secondly, the Respondent was of the view, as of 22 January 2009, that it was not appropriate for an additional 30 acres, comprising the Applicant's lands, to be zoned for residential purposes in the then Sallins LAP. Thirdly, the Applicant's lands were only zoned for residential development in the 2009 LAP for Sallins as a result of a material alteration to the draft plan by the elected members. Fourthly, the legislative position which pertained in January 2009 was different to the position as of August 2015, including under s. 19(2) and s. 31(1)(c) of the Planning and Development Act, as amended.

The submission that if land is *contiguous* to residential land it *therefore* represents sequential development

54. The planning consultant also argued in the 11 August 2015 submission that, because Applicant's lands abutted residential lands, the development of the Applicant's lands for residential housing would, of necessity, represent sequential development. This is clear from s. 10.3 of the submission under the heading "Sequential Development" which begins as follows: -

"The subject lands are contiguous to residential zoned lands and therefore represent sequential development . . ."

The foregoing submission to the effect that the location of the Applicant's lands "*therefore*" would represent sequential development does not, as a matter of fact, reflect the wording found in s. 3.4.6 of the KCDP 2011 – 2017, in which the following is stated in respect of

"Sequential Development": -

"All towns, villages, settlements, rural nodes (as appropriate) shall be developed in a sequential manner, with suitable undeveloped lands closest to the core and public transport routes being given preference for development in the first instance. Zoning shall extend outwards from the centre of an urban area with strong emphasis placed on encouraging infill opportunities. Areas to be zoned should generally be contiguous to existing zoned development lands".(emphasis added).

55. The wording which I have highlighted in bold (similar wording can be found in the 2007 Guidelines) is not, as a matter of fact, addressed by submission 10.3, dated 11 August 2015. The proposition advanced by the planning consultant in respect of the Applicant's lands to the effect that its location contiguous to residential development means that its development would "*therefore*" represent sequential development, ignores all but the final sentence in s. 3.4.6 of the KCDP 2011 – 17, being the county development plan then in force. It is also a matter of fact that the foregoing submission by the planning consultant also found its way into the 1-page document entitled "*Key Planning Arguments in favour of Amendment No. 20*" which documents appears behind the 9 March 2016 minutes as an Appendix, internal para. 9 of which 1-page document states, inter alia: -

"9. The residential element of the zoning objective is contiguous to established residential development and therefore represents sequential development in accordance with proper planning and sustainable development".

11 September 2015 – Chief Executive's report on submissions on the draft Sallins LAP

56. Mr. Cussen exhibits, at NC 8, a copy of the chief executive's report which was prepared in relation to submissions received in respect of the draft Sallins LAP. The chief executive's report is dated 11 September 2015. Section 3 of the report comprises a "Detailed Consideration of Submissions Received", which sets out information under four headings, namely the number of the submission, the name of the party which made the submission, the issues raised and the chief executive's opinion and recommendation. The first submission addressed was one made by the Respondent and it will be recalled that this was a submission made by way of a letter dated 5 August 2015, sent to the Notice Party by Mr. Cussen. That letter made submissions in relation to four issues. The issues raised in the Respondent's 5 August 2012 submission are described in the chief executive's 11 September 2015 report and these are referred to as Sub. 1 (a) to (d), inclusive.

The Chief Executive's comments on the Respondent's submission regarding Flood Risk Assessment

57. Internal page 9 of the chief executive's report refers to the following submission by the Respondent:-

"Sub. 1(a)

Flood Risk Assessment: Advises that a Stage 2 level Flood Risk Assessment for the whole Plan area is required".

With regard to the foregoing submission, what is described in the report as the "Chief Executive's Opinion" includes, inter alia, the following:

"Sub. 1 (a)

A Stage 2 Flood Risk Assessment (also referred to as an 'Initial FRA') was carried out for all lands within the LAP boundary that are classified for land use not compatible with flood – risk.

In those lands where the LAP proposed to zone green – field lands for land – use not compatible with flood – risk, the Initial FRA determined that the impact of flood – risk zones on these lands would be confined to marginal areas and would be of such significance as to undermine the strategic zoning decision. To ensure that the flood – risk in the marginal areas is incorporated into subsequent development of these lands, the SFRA recommended that development of these lands be subject to site specific FRA in accordance with the '*Flood Risk Management Guidelines*' (2009).

Where the draft LAP proposes to zone lands already developed for land – use not compatible with flood risk and where these lands were identified by the initial FRA as being at risk of flooding, the SFRA recommended that further development of

these lands be subject to Site Specific FRA in accordance with the flood risk management guidelines.

Chief executive's recommendation

No change".

58. Having regard to the foregoing, I am entitled to conclude that the Flood Risk Assessment issue was, as a matter of fact, addressed in the manner described in the Chief Executive's report (including the carrying out of a Stage 2 Flood Risk Assessment) and there is no evidence before the Court to the contrary.

The Chief Executive's comments on the Respondent's submission regarding Housing unit targets and density

59. The issues raised in the second element of the Respondent's submission, were summarised in the chief executive's report, on internal page 10, as follows: -

"Sub 1 (b)

Housing Lands & Unit Requirement to 2021: The Department notes that there are a number of sites within the LAP zoned Objective 'A *Town Centre*' and 'K *Commercial/Residential*' which both permit residential as part of mixed used development. The council is requested to provide a housing estimate (unit target) for these lands and that the overall housing unit target is revised accordingly.

Site C4 is small c. 700m of the rail station and is > 3ha. As such, it should have a density similar to sites C5 & C6 (i.e. 30+ units). Table 5 should be revised accordingly".

60. The chief executive's opinion and recommendation in respect of the foregoing submission is set out on internal p. 10 of the chief executive's 11 September 2015 report, as follows: -

"Sub. 1 (b)

The Draft LAP is based on an urban design strategy for the town. This strategy includes a number of Design Briefs for key areas with the goal of regenerating key sites (A1, A2, A3 and K2) in and around the town centre. Rather than prescribe indicative layouts, the council has set a vision for each area. The exact quantum of residential development on each site will be determined on a case – by – case basis. However, in order to estimate the potential on such lands (including the K1 Commercial/Residential lands), an indicative quantum is proposed in a revised Table 5 – attached in Appendix 1.

The density on site C4 has also been amended as per Table 5 attached in Appendix 1.

Given the unit potential on the Town Centre, and Commercial/Residential lands, and considering the infrastructural constraints in relation to wastewater, a revised phasing arrangement is also included in Appendix 1.

Chief executive's recommendation

Revised Table 5 and associated text/phasing is included in Appendix 1 setting out indicative quantum of units on Town Centre and Commercial/Residential lands".

"Appendix 1" to the Chief Executive's Report - a "Revised Table 5"

61. What the chief executive's report described, on internal p.10, as "Appendix 1" appears at internal p. 59 – 62 of the report dated 11 September 2015. What the chief executive referred to as a "Revised Table 5" appears on internal p. 60. That revised Table 5 shows, inter alia, the estimated residential unit potential in respect of sites C1, C2, C3, C4, C5, C6, C7, A1, A2, A3, K1 and K2. The developable site area is stated to be a total of 27.4 ha, representing 598 potential residential units. It will be recalled that the Respondent's submission of 05 August 2015 made specific reference to site C4, located approx. 700m from the railway station. The revised Table 5 ascribes a similar density to sites C4, C5 and C6 and the foregoing is in accordance with the Respondent's submission. The unit potential for site C4 is specified to be 96 residential units.
62. It is also a matter of fact that the revised Appendix 1, which appears between pages 59 – 62, inclusive, of the chief executive's report dated 11 September 2015 and which includes a revised Table 5, makes no reference to the Applicant's lands. No zoning of the Applicant's lands for residential development is included for the purposes of the calculations detailed in the revised Table 5, which is entitled "Quantum of New Residential Land", representing a total of 27.4 ha and 598 Residential units. It is not necessary to look in any detail at the Respondent's submission 1 (c) or (d).

The chief executive's 11 September 2015 report – comments on the submission by David Mulcahy

63. The submission made by David Mulcahy Planning Consultants on behalf of McCarthy Meats Processing Limited, dated 11 August 2015, is dealt with between pp. 18 – 20 of the chief executive's 11 September 2015 report. The said submission is summarised, in response to which, the chief executive's opinion and recommendation is set out in the following terms, from page internal page 18 of the report: -

"Chief executive's opinion

The Core Strategy of the Kildare County Development Plan 2011 – 2017 (CDP) provides the policy framework for local area plans (LAPs), particularly in relation to zoning at LAP level. Population growth for Sallins was forecast as 4,550 by 2017 in the Core Strategy of the Kildare CDP 2011 – 17. The 2006 – 2017 housing unit target remains 527 units while the percentage of allocated growth is 1.9%.

S. 8.0 and Tables 3, 4 and 5 of the draft LAP sets out the 2021 housing unit target for Sallins. This unit target figure takes account (sic) residential units built from

2006 (census data baseline) to 2015 as well as un – built units with valid planning permissions, including unfinished estates.

The housing unit targets are revised as per Appendix 1 of this report and are in accordance with statutory national, regional and county targets and forecasts. Sufficient lands, (including phasing) are zoned in Sallins for residential development over the Plan period.

In addition:

- Sequentially there are lands closer to the town centre/rail station which could accommodate (if required) development in advance of the stated lands;
- The location of the “F Open space” and “E Community and Educational” lands located c. 15km from the town centre, is contrary to proper planning;
- The location and designation of the lands as “H Industry & Warehousing” under the draft LAP has had due regard to the location on approach to the town. The lands, as set out in the written zoning objective (Table 9), are subject to a detailed masterplan which will address design, landscaping (including retention of the mature trees) and visual amenity of the area; and
- Consideration for designation of Sallins as a Moderate Sustainable Growth Town will be considered under the Kildare County Development Plan in conjunction with the eastern and midland regional assembly.

Chief executive’s recommendation:

No change”.

22 October 2015 special meeting of Naas Municipal District – 45 page Minutes

64. It is not in dispute that a meeting took place on 22 October 2015 of the Naas Municipal District. Mr. McCarthy’s second affidavit, sworn on 14 November 2016, exhibits, inter alia, the minutes of the said meeting, comprising 45 pages. They begin as follows:-

“KILDARE COUNTY COUNCIL

Minutes of Special Meeting of Naas Municipal District.

Held at 6:30 p.m. on Thursday 22 October 2015.

At Aras Chill Dara, Devoy Park, Naas, Co. Kildare.

Members present: Councillor J. Lawless (Mayor), Councillors A. Breen, F. Brett, D. Callaghan, B. Hillis, S. O’Neill, R. Power and D. Scully.

Apologies: Councillors S. Moore.

Also present: Messrs P. Minnock, E. O’Sullivan (Directors of Services) Mr. M. Kenny (Senior Planner) Mr. B. Keaney (Senior Executive Planner), Mr. K. Kavanagh

(Meetings Administrator) Mr. A. Cunniffe (Executive Planner), Ms. V. Cooke (Administrative Officer), and other officials”.

Certain decisions taken by the elected members at the 22 October 2015 meeting

65. Among other things, the minutes of the 22 October 2015 meeting confirm that the elected members present at the meeting unanimously agreed to accept the chief executive’s recommendation on the issue of Flood Risk Assessment. This is clear from internal p. 3 of the 45 pages of minutes. Internal page 4 of the minutes records, *inter alia*, the fact that all the members present agreed to accept the chief executive’s recommendation, in response to the Respondent’s submission, with regard to a revised Appendix 1, including a revised Table 5. This involved setting out a residential unit estimate for lands zoned A and K as well as for lands zoned C, so that each site would have a specified target of residential units. Site C4 was dealt with, in particular, and the members agreed to accept the chief executive’s recommendation, which flowed from the Respondent Minister’s submission, as to density on the site. As the minutes record, the 22 October 2015 meeting adopted the revised Appendix 1 and revised Table 5, which included a revised phasing arrangement and did so, prior to the consideration of submissions by David Mulcahy Planning consultants on behalf of McCarthy Meats Processing Limited, which submission was described in the minutes as “Submission 8”. Having summarised certain matters, it is appropriate to look closely at the contents of the 45-page minutes of the 22 October 2015 meeting, from which I note the following.

Consideration of the Chief Executive’s report

66. It is clear that the Chief Executive’s report, dated 11 September 2015, was considered at the meeting on 22 October 2015. The very first heading in the aforesaid minutes is as follows: -

“To consider the Chief Executive’s Report on submissions and observations to the Draft Sallins Local Area Plan 2015 – 2021”.

Of particular relevance to the present proceedings is what is described in the minutes as Submission 8, being the submission by David Mulcahy Planning Consultants on behalf of McCarthy Meats Processing Limited, which I have referred to above. This is dealt with between pp. 39 and 43 of the minutes dated 22 October. The said minutes make clear what was proposed by way of Submission 8. Given its relevance to the present proceedings it is appropriate to quote at some length from pages 39 to 43 of the minutes, beginning at the bottom of internal p. 39. As can be seen from the following, the elected members did not endorse the Chief Executive’s view and made their own proposal. The following is a verbatim extract from the relevant minutes: -

“Submission 8 – David Mulcahy Planning Consultants on behalf of McCarthy Meats Processing Ltd.

This submission proposes the retention of the zonings (Residential, Educational/Community and Open Space/Amenity) as per the existing Sallins LAP

2009 and proposes additional lands for F Open Space & Amenity. Justification for the zonings are as follows:-

- (a) As Sallins now has a recorded population of over 5,000 people, its designation as a small town is dated. It should be designated as a moderate sustainable growth town.
- (b) Sallins has capacity for additional growth compared to other towns in Kildare.
- (c) The housing population targets are very moderate and even the Phase II lands do not reflect the need for additional units.
- (d) Flexibility should be allowed to develop the town centre brownfield sites with other sites.
- (e) Sallins GAA grounds are restricted.
- (f) The town park objective is a longer term goal only.
- (g) The lands are proposed for H Industry and Warehousing under the current Draft LAP.
- (h) Lack of development on the lands was due to the recession,
- (i) 100 acres of land are proposed for zoning. 40 acres are proposed to be transferred free of charge to the community for sports, scouts, playground, etc.
- (j) The concept of having sporting facilities at the edge of town beside residential development is well established in Athy, Newbridge and Maynooth.
- (k) The proposal represents sequential development.
- (l) The new by – pass will terminate at the entrance to the lands.
- (m) Pedestrian links can be delivered in the south west corner of the lands.
- (n) The industrial zoning makes no sense given location on approach to the town and impact on local heritage, contrary to Policy S3.

Chief Executive’s Opinion:

The Core Strategy of the Kildare County Development Plan 2011 – 2017 (CDP) provides the policy framework for Local Area Plans (LAPs), particularly in relation to zoning at LAP level. Population growth for Sallins was forecast as 4,550 by 2017, in the Core Strategy of the Kildare CDP 2011 – 2017. The 2006 – 2017 housing unit target remains 527 units while the percentage of allocated growth is 1.9%.

Section 8.0 and Tables 3, 4 and 5 sets out the 2021 housing unit target for Sallins. This unit target figure takes account (sic) residential units built from 2006 (Census data baseline) to 2015, as well as un – built units with valid planning permissions, including unfinished estates.

The housing unit targets are revised as per Appendix 1 of this report and are in accordance with statutory national, regional and county targets and forecasts. Sufficient lands (including phasing) are zoned in Sallins for residential development over the Plan period.

In addition:

- Sequentially, there are lands closer to the town centre/rail station which could accommodate (if required) development in advance of the stated lands;
- The location of the "F Open Space" and "E Community and Educational" lands located c. 1.5km from the town centre, is contrary to proper planning;
- The location and designation of the lands as "H Industry and Warehousing" under the Draft LAP has had due regard to the location on approach to the town. The lands, as set out in the written zoning objection (Table 9), are subject to a detailed masterplan which will address design, landscaping (including retention of the mature trees and visual amenity of the area);
- Consideration for designation of Sallins as a Moderate Sustainable Growth Town will be considered under the Kildare County Development Plan in conjunction with the Eastern and Midland Regional Assembly.

Chief Executive's Recommendation

No change

Resolved: It was agreed by all members present not to accept the chief executive's recommendation.

The Mayor read out an alternative motion to the meeting in which the site would be zoned as follows: 30 acres – Residential, 37 acres – Open Space/Amenity and 3 acres – Educational. The motion was seconded by Councillor Breen.

Mr. Cunniffe stressed to the members that the proposed zoning would be in conflict with the Core Strategy of the draft Plan, of the County Development Plan and of the Regional Planning Guidelines and advised against the proposal as it could result in c. 424 additional units in a suburban type development 1.5km from the town centre without any proper connections to the town. Mr. Cunniffe also reread, to the members, the content of Section 20(3) of the Planning and Development Acts 2000 – 2015. He informed the meeting that the Sallins Town Centre – indicative urban design/landscape architectural framework plan for the town centre would be undermined and that it would not be possible to consolidate the town centre if the proposed zoning of the site on the outskirts of the town was agreed by the members. Sallins did not have the capacity to absorb such a significant quantum of development at the edge when the overall strategy is to develop underutilised brownfield sites in the heart of the town. It was also unclear exactly which portions of the site were being zoned and for which purpose. Cllr. Power enquired as to what zonings had been attributed to the site in the 2009 Sallins Local Area Plan and the Mayor clarified the matter.

Mr. O'Sullivan informed the meeting that the draft Sallins Local Area Plan was the member's Plan, and that they needed to clearly detail what they proposed to include in it as their proposals were very clearly a departure from the Core Strategy. All statutory bodies would be given a copy of the proposed alterations for their comments. Members of the public would also be entitled to comment during

the display period. Mr. O'Sullivan recommended that the members would accept the chief executive's recommendations regarding Submission no. 8.

The members took a brief recess to enable them draw up a new proposed motion.

Mr. Kenny advised the members that the chief executive's report recommended that Submission no. 8 not be accepted and that the members would need to give reasons why they were not agreeing with the chief executive.

Cllr. Brett stated that the members has read the draft plan and that they hadn't received certainty/commitment from the executive regarding the proposal for a future park and F1. Specifically, Cllr. Brett referred to funds to purchase the lands. He also stated that the members represented the village community.

The Mayor stated that the members acted on behalf of all Naas Municipal District.

Cllr. Power stated that the same planning reasons pertained to submission no. 6, 8 and 35. The Mayor read a statement which stated that Naas Municipal District and Kildare County Council noted: -

- (a) the major increases in population in Sallins over the past two decades and consequent pressure on the social infrastructure of the area manifested in the huge strain on existing and inadequate recreational facilities
- (b) The proximity of Sallins village to Naas town which we note is designated a Tier 1 growth area over the coming decades, the presence of the Sallins & Naas railway station in Sallins, the proximity of the motorway, and upcoming projects to further enhance motorway, airport and regional access to the village, the presence of business and employment parks in close proximity to the village and accordingly resolves to addressing this serious deficit of amenities by amending the draft 2015 – 2021 Sallins Local Area Development Plan as follows:

To zone 37 acres of land to community, amenity and recreational use, 3 acres as educational and an additional 30 acres to be zoned as residential. This land is located on the Clane road, Sallins, adjacent to the ESB sub – station and is proposed to be zoned light industrial in the draft plan. This amendment will return the zonings on this land to the 2009 – 2015 plan with an additional 7 acres for recreational and amenity use and 3 for educational use.

Mr. Kenny stated that the making or amending of a local area plan had to be undertaken in the context of the County Development Plan and that the Minister for the Environment, Community and Local Government had powers of direction.

Cllr. Power stated that the points made by Mr. Kenny were noted and that the members were aware that the Development Plan Guidelines for Planning Authorities stated that in zoning lands for development, local authorities needed to provide for

choice in the market. Due to the lack of sewerage infrastructure in Sallins, residential development north of the railway line could not commence prior to 2019. Mr. Cunniffe confirmed that the pumping station required an upgrade and that this was part of the Upper Liffey Valley Regional Sewerage Scheme project under the remit of Irish Water. Para. 4.14 of the Development Plan Guidelines for Planning Authorities stated that sufficient lands should be zoned to cater for a nine – year period. The Sallins Draft Plan would only cater for demand up to 2021 and the members should consider demand up to 2024. Para. 4.17 of the Guidelines referred to the need for infrastructure and there was a very strong argument to the effect that there was not clarity regarding availability of infrastructure in Sallins. Cllr. Power also stated that the census figures being used were 4 years old and that there had been enormous growth in the area. The outdated figures were already 800 above target. The AIRO report also stated that Sallins was one of the youngest towns in the county. Mr. Cunniffe clarified that the Plan would now run from 2016 – 2022 and said that the 2011 census figures were the only official figures available to the Planning Authority. The Draft Plan (and Table 3) incorporated dwellings built and occupied since 2011 and also included permitted but uncompleted schemes since 2011. The Draft Plan contained enough zoned residential land to meet projected demand for the next 9 years, which accords with the “Development Plan Guidelines for Planning Authorities”. This format is used in all LAP’s in Kildare.

The Mayor again referred to the fact that the members represented all the residents of Sallins and that community groups were struggling with regard to facilities.

Motion 2

It was *resolved* on the proposal of Councillor Lawless, seconded by Councillor Scully, with all members voting in favour, that lands located on the Clane road/ Bodenstown road, be zoned as the following: -

- On the eastern side of land will be zoned residential (30 acres),
- Western side of land will be zoned Open Space and Amenity (37 acres),
- North – western sector of land to be zoned Educational (3 acres).”

The resolution by the elected members on 22 October 2015 and the contents of the KCDP 2011 – 2017

67. It is a matter of fact that the Core Strategy of the KCDP 2011 – 2017 specifies the target figures which were referred to in the minutes of the 22 October 2015 meeting in relation to population for Sallins (namely 4,550 by 2017) as well as the Sallins housing unit target (being 527 units in the period 2006 – 2017). It is clear from the minutes that, during the meeting, the elected members were advised that the zoning proposed in respect of the Applicant’s lands would be in conflict with, inter alia, the Core Strategy of the County Development Plan, being the KCDP 2011 – 2017. It is appropriate to point out at this juncture that, notwithstanding the submission made by David Mulcahy Planning Consultants that Sallins should be designated as a Moderate Sustainable Growth Town, it

was a matter of fact that, as of 22 October 2015, Sallins was designated a Small Town under the County Development Plan which was then in force, being the KCDP 2011 – 2017. It is also a matter of fact that the designation of Sallins as a Small Town, in terms of settlement type within the Kildare County Settlement Hierarchy, was not an issue which was before the elected members on 22 October 2015. There was no question of the elected members having the authority to change the designation of Sallins as a Small Town at the 22 October 2015 of Naas Municipal District Council.

What the draft LAP for Sallins said *before* the adoption of Submission 8

68. Prior to the incorporation of the proposal made by McCarthy Meats Processing Limited, the draft LAP provided zoned lands sufficient for 598 new residential units. This can be seen from the amended "Table 5" in respect of the draft LAP, which Mr. McCarthy exhibits in his supplemental affidavit, sworn on 14 November 2016. Pages 122 – 125 of the documentation exhibited by Mr. McCarthy begins as follows: -

"Appendix 1

Note – this entire section will replace s. 8.2.1 in the draft LAP.

8.2.1 future housing target".

The third paragraph of this replacement section 8.2.1 in the draft LAP states as follows: -

"A total of circa 575 residential units have been constructed in the town over the period 2006 – 2015 resulting in target of 251 units for the period 2016 – 2022. As advocated in the "*Development Plan Guidelines for Planning Authorities*", issued by the Department of the Environment, Heritage and Local Government (2007) over zoning of one third to one half is acceptable to ensure that housing targets are met. The LAP housing target increases to 377 units when an additional 50% over zoning is applied. Regard must also be had to the 137 un – built units with valid permissions currently in existence. Taking these permissions away from the LAP target leaves a remaining target of 240 units for the period 2016 – 2022".

The next page states inter alia the following: -

"Table 4 sets out how the quantum of lands required to meet the target of 240 units' ranges from 5 ha to 10 ha, depending on the average densities used. Under the 2009 LAP, Sallins had a significant quantum of zoned land which remains undeveloped and uncommitted. This had the potential to deliver in excess of the prescribed target of 240 units. In light of this target, the county settlement strategy recognises that Sallins LAP (2009) significantly over – zoned lands for residential use. Therefore, circa 18 ha of land previously identified for residential development in the 2009 LAP will not be required for residential development during the lifetime of this Plan. These lands are therefore recommended for re – zoning".

This is followed by, inter alia:

"Table 5 – Quantum of new residential land (zoned C) with the plan which refers to a total of 27.4 ha of developable site area and gives a total unit potential of 598".

The final page of Appendix 1 which comprises a replacement section 8.2.1 in respect of the draft LAP, contains inter alia the following: -

"It is the policy of the Council

HP1: To facilitate the sustainable development of lands in Sallins for residential use in accordance with Map 1 to ensure compliance with the Core Strategy and the Settlement Strategy set out in Kildare County Development Plan 2011 – 2017, or any future plan".

The following sentence appears at the foot of each of the four pages comprising Appendix 1:

"Chief executive's report on submissions on the draft Sallins LAP – 11th September 2015".

"Appendix 1" was agreed before "Submission 8" was discussed

69. It is clear that the contents of the aforesaid "Appendix 1" were discussed by the elected members at the meeting held on 22 October 2015. It is also clear that a consideration of Appendix 1, and a decision to include it into the Sallins draft LAP, was made *before* a consideration of submissions 1 to 35, inclusive. This is clear from internal p. 2 of the 45 – page minutes which states, inter alia:-

"It was agreed by all the members present that submission numbers 6, 8 and 35 would be considered after all the other submissions had been considered.

The members then discussed the content of Appendix 1 which had also been attached to the end of the Chief Executive's Report. The members referred to the fact that they considered Sallins to be very close to Naas but that it had a Level 4 status in the Retail Strategy for the Greater Dublin Area 2008 – 2016 rather than the Level 1 status allocated to Naas and that this did not adequately allow for the growth of Sallins. Mr. Cunniffe informed the meeting that Sallins is designated in the retail strategy for the greater Dublin Area 2008 – 2016 as a Level 4 centre in the retail hierarchy. Sallins is designated as a Small Town in the Regional Planning Guidelines for the greater Dublin area 2010 – 2022. These designations cannot be changed by the Council but will be subject to review as part of the formulation of the new regional strategy which will be prepared by the Eastern and Midland Regional Assembly. The members referred to the fact that a number of submissions had addressed the retail issue and Mr. Cunniffe briefed the members on the County Development Plan Strategy and the fact that the Sallins Local Area Plans needed to dovetail with the county strategy.

Resolved on the proposal of Councillor Power, seconded by Councillor Callaghan, it was agreed by all members present that Appendix 1 be included in the draft plan and be put on public display as a material alteration to the draft”.

Acknowledgment that there was already an overzoning of land for residential development in the draft LAP before the elected members resolved to zone the Applicant’s land

70. In light of the foregoing, which appears on page 2 of the minutes of the meeting of 22 October 2015, it is a matter of fact that, *before* considering the proposal by David Mulcahy Planning Consultants and ultimately agreeing, inter alia, that 30 acres of the Applicant’s lands would be zoned residential, all members present at the 22 October 2015 meeting unanimously agreed that “Appendix 1” (comprising “8.2.1 Future Housing Target”) be incorporated into the draft LAP. Among other things, s. 8.2.1, from which I have quoted above, makes the following clear: -

- (i) The 2009 Sallins LAP significantly over – zoned land for residential use;
- (ii) Circa 18 ha of land previously identified for residential development in the 2009 LAP will not be required during the lifetime of the plan for 2016 – 2022;
- (iii) Zoned lands sufficient for 598 new residential units was provided under the draft LAP in circumstances where the target to comply with the Core Strategy was 240 units and;
- (iv) The “policy” of the Notice Party was clearly stated, being to facilitate the sustainable development of lands in Sallins for residential use . . . to ensure compliance with the Core Strategy and the Settlement Strategy set out in the KCDP 2011 – 2017.

71. It is particularly significant to note that, *prior* to any consideration of Submission 8, the elected members were clearly aware of the fact that the then draft LAP for Sallins already contained more than sufficient “headroom” or overzoning of land for residential development to meet the target set in the parent County Development Plan. In other words, it was not the case that, prior to considering Submission 8, the then draft LAP for Sallins only had just enough land zoned for residential development to meet the targets set in the County Development Plan, but did not have any overprovision. On the contrary the overprovision was already included *before* any consideration, by the elected members, of Submission 8.

Acknowledgment by the elected members that Council Policy was to comply with the Core Strategy and Settlement Strategy in KCDP 2011 - 2017

72. It should also be noted that, before looking at Submission 8, the elected Council members explicitly acknowledged, by virtue of resolving to include “Appendix 1”, that Council policy was to facilitate the sustainable development of lands in Sallins for residential use to ensure compliance with the Core Strategy and the Settlement Strategy set out in the KCDP 2011 – 2017. The principle that the contents of a LAP must be compliant with or consistent with objectives in its parent County Development plan is a *legal* issue at the

heart of this case, having regard to the provisions in section 19(2) of the Planning and Development Act, 2000. However, it is also a matter of *fact* that the elected members recognised this principle at the 22 October 2015 meeting and did so prior to looking at Submission 8 which concerned the Applicant's lands.

"Materials Alterations Report on the draft Sallins LAP 2016 – 2022", December 2015

73. Exhibit "NC9" to the affidavit of Mr. Cussen, sworn 20 February 2017, comprises a copy of the December 2015 report entitled "Sallins – *Material Alteration Report* on the Draft Sallins Local Area Plan 2016 – 2022". Internal p. 15 of the aforesaid report contains s. 7.0 which is entitled "*Proposed Material Alterations to the Draft Sallins LAP by members of Naas Municipal District contrary to the opinion, recommendation and advice of the Chief Executive*". Internal p. 16 refers to Alteration 20 (arising from Submission 8 and motion no. 2). It will be recalled that submission no. 8, which was discussed at the 22 October 2015 special meeting of Naas municipal district, was the submission made by David Mulcahy Planning Consultants on behalf of McCarthy Meats Processing Limited. It is clear from internal p. 16 of the December 2015 report that certain changes would be needed to the draft Sallins LAP by reason of the acceptance, by the elected members, of Material Alteration no. 20. Internal p. 16 of the December 2015 report describes the relevant "Motion" and the necessary "Map Change" and also makes clear that the adoption of the motion will necessitate an alteration to the boundary of the Local Area Plan. This is because, as a matter of fact, the Applicant's lands were outside of the boundary of the draft Sallins LAP as originally published in June 2015, insofar as the 30 acres to be zoned "New Residential" is concerned. The relevant extract from internal p. 16 of the December 2015 report reads as follows: -

"Motion:

That lands located on the Clane Road/Bodenstown Road be zoned as follows: -

- *On the eastern side of land will be zoned C – New Residential (30 acres).*
- *Western side of land will be zoned F – Open Space & Amenity (37 acres).*
- *North – western sector of land to be zoned E – Community & Educational (3 acres).*

Map Change

Amend Map 1 to reflect motion. The residential element of the motion will be denoted as C9 – New Residential with associated site area.

Note: -

The motion will require an alteration to the LAP boundary. For the purposes of this report, the boundary on Maps 1 and 2 will only be amended . . ."

74. Internal p. 19 of the December 2015 material alterations report in respect of the draft Sallins LAP comprises a revised "Appendix 1", reflecting the inclusion of, inter alia, lands

described as C9. That version of Table 5 deleted the total "Site Area Developable (ha)" which had previously been 19.1 and replaced that with a figure of 36.55 ha and the previous total "Unit Potential" of 598 was replaced with the figure of 1,190. To see where those changes fit, in terms of the various amendments which were made to Table 5 at various points from June 2015 onwards, I have looked elsewhere in this judgment at all five versions of Table 5, of which this was one.

8 January 2016 - Submission by the Respondent re Proposed Material Alterations to the draft Sallins LAP

By means of a letter dated 8 January 2016 from Niall Cussen, principal adviser, forward planning section of the Department of Environmental, Community and Local Government, which was sent to Ms. Veronica Cooke, administrative officer, forward planning section, Kildare County Council, the Respondent made submissions to the Notice Party in respect of what were described in the 8 January 2016 letter as: "*Proposed Material Alterations to the draft Sallins Local Area Plan 2016 – 2022*". This submission is most relevant to the present proceedings and it is appropriate to look at it closely. Among other things, the 8 January 2016 submission by the Respondent stated the following: -

"...The Department notes however that the proposed Material Alterations to *the Draft Sallins Local Area Plan* includes three proposals (Material Alterations no's. 19, 20 & 21) that would result in substantial additional residential lands in Sallins. These proposals aggregate to an additional 14.45 ha of residential land in Sallins (per revised Table 5 of the Local Area Plan) and to potentially a yield of 535 additional dwellings for the 2016 – 22 plan period. The Local Area Plan (as originally proposed) designated 19.1 ha for Residential or Mixed Used including Residential in Sallins. These additional zonings now proposed would nearly double this figure and would be contrary to the Core Strategy of the Kildare County Development Plan 2016 – 22.

Proposed Material Alteration no. 20 relating to lands at the northeastern periphery of the settlement is of particular concern to the Department. This material alteration seeks inter alia to zone 12.15 ha of lands to "C" new residential at an isolated location east of the Clane Road (R407) stretching to the rear of established residential developments. *These proposed residential lands were previously unzoned and outside the identified Sallins draft Local Area Plan boundary . . .*"
(emphasis added)

Specific reference by the Respondent to the "draft Local Area Plan"

75. It is a matter of fact that, in the foregoing submission, the Respondent is not referring to the 2009 LAP in respect of Sallins. Rather, it is perfectly clear that the Respondent is referring to proposed material alterations to what was then "*the draft Sallins Local Area Plan*" and the Respondent used the foregoing wording. In his submission the Respondent was, entirely correctly, pointing out that the lands owned by the Applicant were neither zoned, nor within the boundary, in the *draft* Local Area Plan for Sallins. That is a statement of fact. The Applicant's lands were not zoned for residential development in the draft LAP for Sallins. The Respondent is not referring to the 2009 LAP when he makes this

statement. The 2009 LAP was not being discussed. The letter is headed "*Proposed Material Alterations to the draft Sallins Local Area Plan 2016 – 2022*". The foregoing is a matter of some significance because, in these proceedings, the Applicant argues that, when the Respondent made the Direction which is challenged in the present proceedings, the Respondent was operating under the misapprehension that the Applicant's lands were previously unzoned in the Sallins 2009 LAP and the Applicant maintains that the Respondent had been misinformed as to the prior zoning status of the Applicant's lands insofar as the 2009 LAP was concerned. Put simply, the evidence does not support the Applicant's contention.

76. The second page of the 8 January 2016 letter continues with the following submission by the Respondent: -

"The Department is of the opinion that the peripheral and greenfield nature of the site is at odds with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under s. 28 of the Planning & Development Act 2000. Specifically, decisions to zone land '*must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan*' (s. 4.10, pg. 41 of the Guidelines). Material Alteration no. 20 is contrary to the main strategy of the Local Area Plan to consolidate Sallins by developing the centrally located sites within the town. The view of the Department is that it is not justified on the basis of housing need, Local Area Plan policy or the presence of existing supporting infrastructure - as identified in s. 4.12 of the Guidelines as determining criteria".

The description of the Applicant's lands as being "*peripheral and greenfield*"

77. Insofar as the Respondent used the word "*greenfield*" to describe the Applicant's lands, I am satisfied that this was factually correct and represented the situation on the ground. It is not in dispute that no prior development had taken place on the Applicant's lands. It will also be recalled that internal p. 13 of the 11 August 2015 submission, made by David Mulcahy Planning Consultants confirmed that "*There is no planning history associated with the subject lands*" and the foregoing is entirely consistent with the fact that the relevant lands comprised a greenfield site. Insofar as the Respondent referred to the "*peripheral*" nature of the site, I am also satisfied, in light of the evidence before the court, that this was, and remains, factually correct. The Applicant's lands are, beyond doubt, on the periphery of, as opposed to being in the centre of, the town of Sallins. This is a matter I will touch on again later in this judgment because, as will be seen, even the planning consultant who made a second submission with what must have been the full knowledge and consent of Mr. McCarty, did not object to the term "*peripheral*" and made a submission on the basis that this description applied. Furthermore It will also be recalled that, in a submission made seven years earlier (namely the 22 January 2009 letter from the special policy section of the Respondent, to the forward planning section of the Notice Party) the same lands were described in similar terms, with the word "*peripheral*" being used in 2009 in the context of the Respondent's then objection to the inclusion, in what

was then the draft 2009 LAP, of additional lands for residential zoning, being the same lands owned by the Applicant.

78. I am also satisfied that, as a matter of fact, the Respondent was aware of the location of the Applicant's lands at all material times. In particular, the Respondent knew where the Applicant's lands were located, with reference to the town centre of Sallins, with reference to the railway station in Sallins, with reference to the established residential development which the Applicant's lands abut, with reference to the Clane Road (R407) and with reference to the location of those sites which, collectively, made up some 19.1 hectares of land zoned for residential or mixed use in the Sallins LAP as originally published in June 2015. The evidence in this case demonstrates that, long before the Respondent issued the 8 August 2016 Direction, he was aware of the location of the Respondent's lands, including, in particular, the 30 acres of land at the heart of the present proceedings, regardless of any description applied to those lands. It will be recalled that when the draft Sallins LAP was produced in June 2015, it specified a sufficient quantum of land to be developed for residential use, in compliance with the population growth target and housing unit targets set out in the "parent" county development plan and it is also a fact that none of the Applicant's lands were identified for residential development in that June 2015 draft. It is also a fact that the draft LAP of June 2015 identified, as suitable for residential development, lands closer to the town centre and closer to the railway station than the Applicant's lands. For the Applicant's lands to be described as on the periphery of Sallins, as opposed to being centrally located in the town, is factually correct.

79. The 8 January 2016 submission by the Respondent concluded as follows: -

"In particular, the Department notes that a residential zoning to the northeast of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands whereby such zoning should 'extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (s.4.19 of the Development Plans Guidelines). The proposed zoning is not justified in relation to specified zoning criteria and would be contrary to the Ministerial Guidelines.

Accordingly, the Department is of the view that Material Alteration no. 20 is not compliant with the Guidelines above and that in line with its statutory responsibilities, the Planning Authority must omit the proposal from the draft local area plan in order to ensure its compliance with the Minister's guidelines above...".

February 2016 - Chief Executive's Report

80. The report entitled "*Chief Executive's Report on submissions on the proposed Material Alterations to the Draft Sallins Local Area Plan 2016 – 2022*" is dated February 2016. A copy comprises exhibit NC 11 to Mr. Cussen's affidavit. Internal pp. 10 – 12 of the said report summarised the 8 January 2016 submission made by the Respondent. Internal p. 11 of the report contains the chief executive's opinion and recommendation in relation to proposed Material Alteration No. 20, being the proposal to zone the Applicant's lands,

including 30 acres of the Applicant's lands for New Residential development. The following are verbatim extracts from pp. 10 to 12 in which the chief executive's views are set out: -

"The Draft LAP presents a comprehensive planning rationale for the sustainable development of the town, with a specific focus on developing the urban core and associated amenities in a sequential manner. This is reinforced in the preferred development strategy for consolidation which underpins the entire Draft Plan. This is set out in ss. 4 and 5 of the Draft Plan.

Proposed Material Alteration no. 20 remains contrary to this strategy for the reasons as set out by the previous chief executive's report on submissions to the draft LAP (dated 11th September 2015) as reinforced by this submission from the DECLG.

The addition of 12.1 ha (circa 365 units) (900 people) of residential land at the northeast of Sallins, remote from the town centre in an isolated area to the rear of a large tract of proposed open space is contrary to proper planning . . .

A detailed Urban Design and Public Realm Strategy has been prepared for Sallins town centre. Material Alteration no. 20 will undermine the concept which has been welcomed by the Naas MD as it will reinforce an undesirable pattern in allowing development at the periphery in advance on (sic) developing the heart of Sallins in the first instance, moving out sequentially thereafter . . .

Chief Executive's recommendations

Revert the zoning of the lands to that as set out under the Draft Sallins LAP . . ."

9 March 2016 special meeting of Naas Municipal District

81. It is not in dispute that a special meeting of Naas Municipal District took place on 9 March 2016 and the minutes of the said meeting were exhibited by Mr. McCarthy in his 3 November 2016 affidavit. Those minutes begin as follows:

"Minutes - Naas MD 9/3/16"

Minutes

Naas Municipal District special meeting

March 9th 2016 in Aras Chill Dara, Naas.

Present:

Cllr. F. Brett (Deputy Mayor & Chair), Cllr. B. Hillis, Cllr. D. Scully, Cllr. S. O'Neill, Cllr. A. Breen, Cllr. S. Moore, Cllr. D. Callaghan, Cllr. R. Power.

Also present:

P. Minnock (director of services), M. Kenny (Sen. Planner), K. Kenny (Sen. Exec. Planner) A. Cunniffe (Exec. Planner), K. Kavanagh (Sen. Exec. Officer)

Agenda: To consider the chief executive's report on the submissions/observations on the proposed material alterations to the draft Sallins Local Area Plan (LAP) 2016 – 2022 and to make, amend or revoke the Local Area Plan under s. 20(3) of the Planning and Development Acts 2000 – 2015.

Cllr. Brett opened the meeting indicating the purpose of the meeting was to consider the chief executive's report on the submissions on the proposed material alterations to the draft Sallins LAP, and drew the members' particular attention to proposed alterations nos. 19, 20 and 21 . . ."

Material Alteration No. 20

82. Of particular relevance to the present proceedings is what was described in the 9 March 2016 minutes as proposed "material alteration No. 20", which is described in the first paragraph on the second page of the minutes as follows: -

"Alt. No. 20 – Rezoning of lands on Clane/Bodenstown road from Industry/Warehousing to (i) Open Space/Amenity, (ii) New Residential, and (iii) Community & Education, respectively".

83. It is not in dispute that alteration No. 20 concerns the Applicant's lands. The third and fourth pages of the minutes of the 9 March 2016 meeting contain, inter alia, the following with regard to alteration No. 20: -

"Mr. Minnock drew the members' specific attention to the Minister's submission (a copy of which had previously been circulated to the members) on the proposed material alteration no. 20 in the draft LAP relating to lands in the north-eastern periphery of Sallins off the Clane road.

Mr. Minnock summarised these submissions making clear that the Minister had stated that: -

- (i) The peripheral and greenfield nature of the land is at odds with planning guidance on the zoning of lands provided in the Development Plan Guidelines issued by the Minister under s. 28 of the Planning & Development Acts.
- (ii) That decisions to zone land "must be made in an open and transparent matter, must be clearly justified on the basis of established need and must support the aims and strategy of the plan."
- (iii) Material alteration no. 20 is contrary to the main strategy of the LAP to consolidate Sallins by developing the centrally located sites within the town.
- (iv) The proposed alteration is not justified on the basis of housing need, LAP policy or the presence of existing supporting infrastructure as identified in the Guidelines as determining criteria.

- (v) The proposal is contrary to the sequential approach to the zoning of lands whereby such zoning should extend out from the centre of an urban area with undeveloped lands closest to the core being given preference.
- (vi) The proposed zoning is contrary to the Ministerial Guidelines.

In line with its statutory responsibilities, Mr. Minnock indicated that the Minister clearly stated that the planning authority must omit this proposal (i.e. Materialalteration no. 20) from the draft LAP in order to comply with Ministerial Guidelines.

Mr. Minnock also referenced a previous similar instance which had arisen during consideration of the Naas Town Development Plan (in May 2011) where the town council members had initially sought to rezone land as residential in return for community gain. The salient points of the Naas TC meeting, minutes of which had also been previously circulated to the members, were summarised again by Mr. Minnock during this meeting.

Mr. Kenny referred to the legal advice provided to the members at the time of the Naas Town Plan, and reminded the members that the LAP must be consistent with the Core Strategy of the County Development Plan, and that they must have regard to Ministerial Guidelines.

Mr. Kenny advised that, if the members were to disregard the chief executive's advice, a number of consequences could arise for the council and the members. Mr. Kenny explained that it was possible that the municipal district's decision could be judicially reviewed, leaving the members who disregarded the chief executive's advice liable for surcharge. He added that, given the department's submission, the Minister could invoke his powers under Sn. 31 of the Planning & Development Acts 2000 – 2015 where he is of the opinion that the council/members had ignored or not taken sufficient account of his submission, and could initiate a process directing the council to reverse the proposed zoning and that of Alteration no. 20. . . ."

84. The said minutes go on to record various contributions by elected members including the following, on internal p. 5: -

"In debating the chief executive's recommendation regarding material alteration 20, Cllr. Moore contended that this case was not similar to that mentioned by Mr. Minnock in his reference to the Naas Town Plan in 2011 in that Kildare County Council was not being offered lands in this instance in consideration of zoning. Mr. Minnock made the point that the members were still proposing to rezone land as residential in return for community gain.

Cllr. Scully referred to the Minister's guidelines as being just guidelines and put forward a number of arguments in favour of alteration no. 20.

Cllr. Scully stated that the current LAP identifies Sallins as a "Small Town", and contended that the town's population in excess of 5,000 since 2011 means it should

be recognised as a “Moderate Sustainable Growth Town” with associated increased growth levels . . .”

85. Internal p. 6 of the aforesaid minutes dated 9 March 2016 contains inter alia the following: -

“While appreciating that the Minister may make a directive if he/she is of the opinion that a planning authority has *ignored or has not taken sufficient account of submissions or observations made by the Minister to the Planning Authority*, Cllr. Power felt that the members had neither ignored nor taken insufficient account of the Minister’s observations and offered that Minister’s submission was both ignoring and contrary to the wishes of the majority of people in Sallins . . .

Cllr. Power added that no additional lands are being proposed for zoning now than was the case in 2009, and said it is difficult to understand criticism for zoning for housing and community facilities when such zones are in even higher demand today than they were seven years ago”.

86. Internal p. 7 of the minutes contains inter alia the following: -

“Cllr. Moore commented that responsibility for making a Local Area Plan, including the various policies and objectives contained within it, rests with the elected members as a reserved function.

Mr. Minnock again stated that the proposed zoning was contrary to the Core Strategy of the County Development Plan, and that it was not the zoning for community that was the core issue but the proposed zoning for additional new residential development.

Mr. Cunniffe said that the proposal to accept Alteration no. 20 undermines the strategy for the development of the core of the town. Furthermore, Mr. Cunniffe said that Cllr. Power’s comparison to the 2009 Local Area Plan is unjustified in light of the fact that the Core Strategy was introduced under the Planning and Development (Amendment) Act 2010.

In acknowledging a comment from Cllr. Moore that the members were taking the views of the local community into consideration, Mr. Kavanagh reminded the members that they also had a statutory duty to adhere to proper planning and sustainable development principles and that they must also comply with the Department’s submissions.

On the proposal of Cllr. Moore, seconded by Cllr. Power, Cllr. Brett then called for a roll-call vote on the matter, during which each of the eight members present voted to reject the chief executive’s advice and recommendation relating to Alteration no. 20 and to accept the proposed rezoning of the lands at Clane/Bodenstown road as follows:

- Open Space & Amenity (37 acres), New Residential (30 acres) and Community & Education (3 acres) . . .”

87. The final page of the minutes of the 9 March 2016 meeting records the resolution buy the elected members as follows: -

“Resolution

It was resolved on the proposal of Councillor Hillis, seconded by Councillor Moore, that the Sallins Local Area Plan 2016 – 2022 be made, pursuant to s. 20 of the Planning & Development Acts 2000 – 2015, incorporating the amendments proposed and agreed by the members of Naas Municipal District at their meeting on March 9th 2016”.

88. On 9 March 2016, the elected members resolved to incorporate, into the Sallins LAP 2016 – 2022, the amendments referred to as Alteration no. 20, described on p. 2 of the minutes of the meeting as: -

“Rezoning of lands on Clane/Bodenstown Road from Industry/Warehousing to (i) Open Space & Amenity, (ii) New Residential, and (iii) Community & Education, respectively”.

It is a matter of fact that, by so doing, the elected members increased the quantum of land which would be zoned for residential development under the Sallins LAP 2016 – 2022 in circumstances where, prior to making that decision, there was already more than sufficient land zoned for residential development to meet the targets set in the parent County Development Plan in that the previous version of the LAP included overzoning in line with the 2007 Guidelines. It is also a fact that, when resolving to incorporate Alteration no. 20, the elected members did not, at the same time, look at all other lands which were to be zoned for new residential development under the Sallins LAP and decide that certain other lands should not be zoned “New Residential” with a view to ensuring that there would be no net increase in the quantum of land available for residential development as a result of resolving to incorporate Alteration no. 20. The foregoing was something the elected members could have done, namely to decrease, by 30 acres, the area of land to be zoned “New Residential” so that, by incorporating Alteration no. 20, there would be no net increase in the quantum of land available for new residential development. I am satisfied that, as a matter of fact, the elected representatives did not do so.

The Sallins LAP 2016 – 2022 as adopted on 9 March 2016

89. It is not in dispute that on 9 March 2016 the Notice Party adopted the Sallins Local Area Plan 2016 – 2022. This included Material Alteration no. 20. A copy of the final version of the Sallins LAP 2016 – 2022, as adopted, was exhibited by Mr. McCarthy in his 14 November 2016 affidavit and comprised “SM 2 Tab A” thereto. Extracts from the foregoing plan were also exhibited by Mr. Stewart Logan, planning adviser, on behalf of the Respondent, comprising “SL 1” to his affidavit sworn on 12 December 2016. Internal

p. 3 of the final version of the Sallins LAP, as adopted begins with the following statement: -

"1.0 Introduction

The Sallins Local Area Plan 2016 - 2022 (LAP) has been prepared in accordance with the requirements and provisions of the Planning and Development Act 2000 (the Act), as amended. It sets out an overall strategy for the proper planning and sustainable development of Sallins in the context of the Kildare County Development Plan 2011 – 2017 (CDP) and the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022. It is also informed by Ministerial Guidelines issued pursuant to s. 28 of the Planning and Development Acts 2000 – 2015 (the Act) together with compliance with EU Directives regarding strategic Environmental Assessment and Appropriate Assessment.

1.1 Form and content of the Local Area Plan

This Plan is set out in a written statement with accompanying maps. It comprises;

- Part A – Introduction, context and development strategy
- Part B – Policies and objectives
- Part C – Land use zoning

The written statement shall take precedence over the maps should any discrepancy arise between them. In the full interpretation of all objectives for Sallins, it is essential that both CDP and the LAP are read in conjunction. Where conflicting objectives arise between the CDP and the LAP, the objectives of the CDP shall take precedence.

..."

Table 5 in the "April 2016" and "5th April 2016" versions of the Sallins LAP

90. The version of the Sallins LAP which Mr. McCarthy exhibits contains "*Table 5 Capacity for residential development on zoned land in the Plan*" and this "*Table 5*" appears on internal p. 17 of the Sallins LAP. It refers to a total of 21.35 hectares in terms of developable site area, representing a unit potential of 758. The version which Mr. McCarthy exhibits is marked on the very first page, bottom right hand corner, as "*April 2016*". The version exhibited by Mr. Logan has "*5th April 2016*" in the bottom right hand corner of the very first page. Internal p. 16 also contains a "*Table 5 capacity for residential development on zoned land in the plan*". This "*Table 5*" refers to a total of 33.5 hectares of "*Site area developable (ha)*" and gives a figure of 1,123 in terms of "*Unit Potential*".
91. It will be recalled that the KCDP 2011 – 17 specified "*2006 – 2017 housing units target*" for each of the eight settlements within Co. Kildare which were designated as "*Small Towns*". The relevant housing unit target for Sallins, which appears in the KCDP 2011 – 17 is 527. It is a matter of fact that this was the housing unit target in the County Development Plan at the point when the Sallins Local Area Plan was adopted. It is a matter of fact that the housing unit target of 527 in the County Development Plan is

significantly less than (a) the 758 residential units referred to in the "April 2016" version of the Sallins LAP exhibited by Mr. McCarthy and (b) the 1,123 residential units referred to in "Table 5" of the "5th April 2016" Sallins LAP 2016 – 22, as adopted. Elsewhere in this judgment and for the sake of clarity, I examine the various amendments to "Table 5" from the point at which the initial draft LAP was published and I look closely at each version of Table 5 in chronological order.

9 March 2016 document - "Key planning arguments in favour of amendment no. 20".

The minutes of the 9 March 2016 meeting, which Mr. McCarthy exhibits, are immediately followed by a document described, in handwritten notes, as "*Appendix 1 to mins of Naas MD...9/3/2016*". The document has a typed heading as follows: "*Key Planning Arguments in Favour of Amendment no. 20*" which comprises 10 typed paragraphs. At the very top of the document appear some manuscript additions, as follows: -

"Guidelines – that's all they are.

Section 31 of the Planning Act.

(D. Scully)";

"[Cllr?] Scully statement";

"Appendix 1

to Mins

of Naas MD

9/3/2016"

After para. 10, the following manuscript note appears at the foot of the document: -

"Meet with the Minister".

Counsel for the Applicant submits that this document sets out the reasons for the acceptance of Material Alteration no. 20 at the 9 March 2016 meeting. The first of those is stated in the following terms: -

"1. The current LAP identifies Sallins as a Small Town; the town's population in excess of 5,000 since 2001 means that it should be recognised as a Moderate Sustainable Growth Town with associated increased growth levels . . ."

92. Having regard to the contents of the minutes of the Naas Municipal District special meeting held on 9 March 2016, I am satisfied that, as a matter of fact, the elected members did not accept that their decision to adopt Material Alteration no. 20 would amount to a breach of any Ministerial guidelines issued by the Respondent under s. 28 of the Planning and Development Act 2000. Nor did they purport to specify reasons to justify a departure from Ministerial guidelines which, in the view of the elected members were

bona fide and consistent with proper planning and development. Rather, the factual position, evidenced by various contributions made by the elected members at the 9 March 2016 meeting, is that the elected members were of the view that incorporating Material Alteration no. 20 was neither a breach of any statutory provision or inconsistent with any Guidelines. Examples of the reasons deployed by the elected members to justify their view that no statutory provision or guideline was breached by adopting Material Alteration no. 20 include the following: -

- The contention that Sallins should be recognised as a “Moderate Sustainable Growth Town” with associated increased growth levels (whereas, as a matter of fact, Sallins was then designated as a “Small Town” and remains so designated);
- The contention that, because the population of Sallins was in excess of 5,000, it should not be regarded as a “Small Town” (notwithstanding the fact that, nowhere in statute or in the County Development Plan does it state that once a “Small Town” has a population of in excess of 5,000, its designation shall change);
- The contention that Sallins had the capacity to cope with increased growth compared to other towns in Kildare, (being a subjective assessment which ignores the objective content in the county development plan as to specific targets for growth, including for population and residential housing units in the town of Sallins);
- The contention that the proposed rezoning was contiguous to established residential development and “therefore” represented sequential development, (notwithstanding the contents of the Core Strategy and Settlement Strategy as contained in the county development plan, including the “*Sequential Approach*” set out in s. 3.4.6 of the KCDP 2011 – 17 which makes clear, inter alia, that sequential development requires “ . . . *suitable undeveloped lands closest to the core and public transport routes being given preference for development in the first instance. Zoning shall extend outwards from the centre of an urban area with strong emphasis placed on encouraging infill opportunities . . .*” and the Applicant’s lands were neither the closest to the core of Sallins or to public transport and did not constitute infill opportunities, being a greenfield site);
- The contention that no additional lands were being proposed for zoning as of March 2016, than was the case in 2009 (which ignores, inter alia, the fact that the draft LAP for Sallins explicitly stated that there was overzoning for residential development in the 2009 LAP, as well as the fact that, prior to the adoption of Material Alteration 20, the then draft LAP already contained an over-provision in respect of residential zoning, for stated reasons which appear in the said draft).
- The contention that the Respondent Minister’s submissions both ignored and were contrary to the wishes of the majority of people in Sallins (implying there was an equivalent legal obligation on the Respondent Minister not to ignore or not to fail to take sufficient account of the wishes of the majority of people, the implication being

that the will of the majority was a determinative factor in respect of the Notice Party's decision making);

The elected members' stance that there was no breach of statute or Guidelines by adoption MA20

93. Nowhere in the document entitled "*Key planning arguments in favour of Amendment no. 20*" is it acknowledged that adopting Material Alteration no. 20 and zoning an additional 30 acres for residential development would be at all inconsistent with the contents of any Ministerial guidelines. There was no acknowledgment by the elected members, or in the "*Key planning arguments*" document, that any statutory provision was breached. Rather, 10 "*arguments*" are deployed in an attempt to justify the stance taken by the elected members that no breach of any statutory provision or Guidelines arose.
94. In short, it is plain from the contents of the minutes of the meeting held on 9 March 2016 that the elected members did not, in fact, regard themselves as contravening any legislative provision or the contents of any Guidelines by adoption Material Alteration No.20. In particular, the elected members regarded the zoning of the Applicant's lands for residential development as constituting sequential development. Thus, it is a matter of fact that the elected members did not prepare a written justification by reference to local circumstances which was said by them to justify a departure from the Sequential Approach, nor was any such justification set out in the written statement of the Local Area Plan which the elected members approved on 9 March 2016 (such a written statement being relevant to Guidelines and legislation previously referred to – see s. 4.19 of the 2007 Guidelines and s. 28 of the PDA 2000).

30 March 2016 Report "Re: Draft Direction under s. 31 Planning and Development Act in relation to the Sallins Local Area Plan 2016 – 2022".

95. Mr. Stewart Logan is a planning adviser in the Respondent. Tab P of his exhibits comprise a 30 March 2016 report by Mr. Logan for the Respondent entitled "Re: Draft Direction under s. 31 Planning and Development Act in relation to the Sallins Local Area Plan 2016 – 2022". This report sets out information under headings which include Background, Proposed Material Alterations to the Draft Sallins Local Area Plan 2016 – 2022, Material Alteration no. 19, Material Alteration no. 20, Material Alteration no. 21, Council Decision, Department Observations, Proposed Zonings East of the Clane Road (R407) (Material Alteration no. 20) and Conclusion and Recommendation. Internal p.2 of the 30 March 2016 report contains, inter alia, the following: -

"2.1 *Proposed zonings east of the Clane Road (R407) (Material Alteration no. 20)*

This *proposed Material Alteration (no. 20)* relates to lands to the east of the Clane Road (R407) and stretching to the rear of existing residential development at the northeastern periphery of Sallins. The Material Alteration seeks to rezone a significant land parcel to three new zonings consisting of "E – Community & Educational (1.2Ha)", "F – Open Space & Amenity (14.5 Ha)" and "C – New Residential (12 Ha)". The western portion (proposed Open Space) of the Material Alteration site includes lands originally proposed as "H – Industry & Warehousing" in the *draft LAP* that were within the identified LAP boundary. The eastern portion

(proposed Residential) and the smaller northern portion (Community & Educational) of the Material Alteration site includes lands *previously unzoned and outside the identified LAP boundary as originally proposed*". (emphasis added)

Specific references in the 30 March 2016 report to the "draft LAP"

96. A number of relevant facts emerge from an analysis of the foregoing paragraph. Firstly, it is beyond doubt that, when the draft LAP for Sallins was originally published in June 2015, none of the Applicant's lands were zoned for residential development. It is also beyond doubt that, what became known as "Material Alteration no. 20" was the proposed alteration to the draft Sallins LAP, which emerged from submission no. 8 made by David Mulcahy Planning Consultants and a core element of same was that 30 acres would be zoned "C" for New Residential development. It was called a "Material Alteration" because it would require an alteration of the draft LAP and, indeed, an alteration of the LAP boundary as originally published. Material alteration No. 20 was plainly not a material alteration to the 2009 Sallins LAP and it could not reasonably be suggested that anyone seeing a reference to "Material Alteration" or to "Material Alteration 20" or to "MA20" would regard it as other than a reference to a proposed alteration to the then *draft* LAP for Sallins (which concerned the period commencing in 2016), not a reference to the 2009 LAP for Sallins. The 2009 Sallins LAP was, of course, coming to an end and a proposed material alteration, in 2015 or 2016 to a 2009 LAP would be nonsensical. The very first words in the foregoing paragraph are "*This proposed material alteration (no. 20) relates to...*" and there follows a description of what was proposed. It is perfectly clear that, as a matter of fact, the paragraph was describing a material alteration to the then *draft* LAP. It was not, as a matter of fact, describing a material alteration to the 2009 LAP.

The reference to "lands previously unzoned"

97. When, in the final sentence of paragraph 2.1 of the Respondent's 30 March 2016 report, reference is made to "*lands previously unzoned*", it is perfectly clear that this is a reference to lands which were both unzoned and outside the identified LAP boundary in the draft LAP as originally published in June 2015. There is no suggestion in the foregoing paragraph that the Respondent Minister was being told that the Applicant's lands were unzoned in the 2009 Sallins LAP. The 2009 LAP was not under discussion. It is perfectly clear that what was under discussion was a proposed Material Alteration to its successor, namely the then draft LAP. Indeed, to put matters entirely beyond any doubt, the very same paragraph explicitly refers to "*the draft LAP*". The foregoing findings of fact are of some significance in this case, in circumstances where it was submitted by Counsel for the Applicant that, when making his decision to issue the Direction of 8 August 2016, the Respondent was operating under a fundamental error in that he had been mistakenly informed that the Applicant's lands were previously unzoned in the 2009 LAP for Sallins. No matter how skilfully that submission was made, the evidence wholly undermines it and I am satisfied that, as a matter of fact, the Respondent was not mistakenly informed of the position and did not act under error in relation to the previous zoning status of the Applicant's lands. Two further points should be emphasised at this stage. Firstly, Mr Logan's report of 30 March 2016 was made in respect of a proposed draft Direction, which draft Direction subsequently issued on 5 April 2016. There is no challenge brought to the

draft Direction in these proceedings. Furthermore, in advance of the Respondent Minister's decision to issue the 8 August 2016 Direction, the Respondent was provided with material which repeatedly gave the Minister correct information as regards the historic planning status of the Applicant's lands and wholly undermines the submission that the Minister acted under an error. That material will be examined, in chronological order, later in this judgment.

98. Section 2.1 of the 30 March 2016 report which was prepared for the Respondent continued as follows : -

"The Kildare County Development Plan 2011 – 17 acknowledges that Sallins grew rapidly with its population increasing by 40% in the 2006 – 11 period. Section 3.4.3 of the Kildare CDP 2011 – 17 states that the growth of Sallins *'will be controlled to limit pressure on services, the environment and unsustainable commuting patterns'*. The Kildare CDP 2011 – 17 details a population target of 4,550 for 2017 (Table 3.3) and a housing target of 527 for the 2006 – 2017 period which equates to 1.9% of the county allocated growth (27,982 units). The 2011 census population figure for Sallins was 5,283 persons which an (sic) increase of c. 40% on the 2006 figure. Population was therefore significantly ahead of the county target in 2011.

The additional residential zoning proposed could potentially generate a further 350+ housing units for Sallins. The LAP indicates a housing unit target of 240 units for the 2016 – 22 period (Table 3 of the LAP). Revised Table 5 of the Plan now indicates a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed zoning is therefore not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s. 19(2) of the Planning & Development Acts 2000 – 15 which requires that *'a local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan'*.

In a strategic context, it is also noted that c. 135 hectares are zoned for new housing development in the Naas town Development Plan 2011 – 17 adjoining to the south of Sallins. This supports the assessment that there is no shortage of zoned residential lands in the Naas/Sallins area and that the further additional lands proposed are not justified in terms of need.

The peripheral and greenfield nature of the site is also at odds with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under s. 28. Specifically, decisions to zone land *'must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan'*. (s. 4.10, pg. 41 of the Guidelines). Material Alteration no. 20 is contrary to the main aim of the LAP to consolidate Sallins through developing the centrally located sites within the town. It is not justified on the basis of housing need, policy or existing

supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.

In particular, a residential zoning to the northeast of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands whereby such zoning should 'extend out from the centre of an urban area', with undeveloped lands closest to the core and public transport routes being given preference (i.e. 'leapfrogging to more remote areas should be avoided' s. 4.19 of the Development Plans Guidelines). The proposed zoning is not justified in relation to specified zoning criteria and would be contrary to the Ministerial Guidelines".

99. An analysis of the evidence in this case does not reveal any inaccuracies with regard to the facts as set out in the 30 March 2016 report. For example, it is incontrovertibly correct that the LAP's "parent" development plan, being the KCDP 2011 – 17, specifies a population target of 4,550 for Sallins to 2017, as well as a housing target, for the 2006 – 2017 period of 527, equating to 1.9% of the county allocated growth. It is also a matter of fact that, as of 30 March 2016, the most recent "Table 5" as contained in the Sallins LAP, indicated a total of 1,123 potential housing units to be provided. It is a fact, too, that this figure is greater than the target in the parent county plan. Nor is there anything marginal or borderline about the difference between the two figures in terms of a residential housing unit target. Later in this judgment, and for the sake of clarity, I chart the evolution of the "Table 5" from its initial iteration to the 5th and final version.
100. Section 3.0 of the 30 March 2016 report set out the "Conclusion and Recommendations" specifically that the draft Sallins Local Area Plan 2016 – 2022 is not in compliance with legislative requirements. Section 3.0 went on to refer to s. 31(1)(a) of the Planning & Development Acts 2000 – 15, to Guidelines issued by the Respondent under s. 28 of the Planning & Development Act 2000, specifically the 2007 Guidelines, to s.31(1)(c) of the Planning & Development Acts 2000 – 15 and to s. 19(2) of the Planning & Development Acts, 2000 – 15. Section 3 was followed by "Appendix 1" which began with the words "Ministerial Direction – It is considered that the Sallins Local Area Plan 2016 – 2022 is in breach of s. 31 (1) (a) and (c)" and, under the heading "Reason", went on to state, inter alia: -

"The Plan is not in compliance with s. 28 Planning Guidelines on Development Plan Guidelines (2007) and is not in compliance with s. 19(2) of the Act".

1 April 2016 Report entitled - "Proposed Ministerial Direction regarding the now adopted Sallins Local Area Plan 2016 – 2022"

101. Mr. McCarthy has also exhibited, inter alia, an internal report by Mr. Eoin Bennis of the Respondent's Planning Section, dated 1 April 2016, entitled "Proposed Ministerial Direction regarding the now adopted Sallins Local Area Plan 2016 – 2022". This five – page report sets out information under various headings including Summary, Material Alteration no. 19, Material Alteration no. 20, Material Alteration no. 21, Summary of

Issues and Decisions Sought. Internal p. 2 of this 1 April 2016 document contains, inter alia, the following: -

“The western portion (proposed open space) of the Material Alteration site includes lands originally proposed as “H” *Industry & Warehousing* in the draft LAP that were within the identified LAP boundary. The eastern portion (proposed Residential) and the smaller northern portion (Community & Educational) of the Material Alteration site includes lands previously unzoned and outside the identified LAP boundary as originally proposed . . .”

“lands previously unzoned and outside the identified LAP boundary as originally proposed”

102. It is clear from the foregoing that the author’s reference to “*lands previously unzoned*” was a reference to those lands being unzoned and outside the boundary in the LAP “*as originally proposed*”, being the draft LAP which was published in June 2015. No other interpretation is reasonable. The reference to lands being outside the LAP boundary as originally proposed was not a reference to the 2009 LAP. There was nothing “proposed” about the 2009 LAP. It has long since been adopted and was coming to the end of its life. Hence the necessity for a new LAP for Sallins, the original draft of which was published in June 2015 and which did not zone any of the Applicant’s lands for residential development. Mr. Bennis was not, as a matter of fact, referring to the 2009 LAP. Mr Bennis made no suggestion that the Applicant’s lands were not zoned in the 2009 LAP. Rather, Mr. Bennis was clearly referring to the Sallins draft LAP as originally published. Indeed, he specifically used the words “*draft LAP*” in the very sentence which precedes the reference to “*lands previously unzoned*”. On the evidence I am satisfied that, as a matter of fact, the Respondent Minister was not misinformed about the prior zoning status of the Applicant’s lands. The information given to the Respondent was factually correct.
103. Internal p. 3 of the 1 April 2016 report by Me. Bennis set out information which was consistent with the contents of the 30 March 2016 report by Mr. Logan. A verbatim quote from p. 3 is as follows: -

“The additional residential zoning proposed could potentially generate a further 350+ housing units for Sallins. The LAP indicates a housing unit target of 240 units for the 2016 – 22 period (Table 3 of the LAP). Revised Table 5 of the Plan now indicates a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed zoning is therefore not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s. 19(2) of the Planning & Development Acts 2000 – 2015 which requires that ‘A local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan’.

The peripheral and greenfield nature of the site is also at odds with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under s. 28. Specifically, decisions to zone land 'must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan' (s.4.10, pg. 41 of the Guidelines). Material Alteration no. 20 is contrary to the main aim of the LAP to consolidate Sallins through developing the centrally located sites within the town. It is not justified on the basis of housing need, policy or existing supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.

In particular, a residential zoning to the north east of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands whereby such zoning should 'extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference i.e. 'leapfrogging' to more remote areas should be avoided' (s. 4.19 of the Developments Plans Guidelines). The proposed zoning is not justified in relation to specified zoning criteria and would be contrary to the Ministerial Guidelines.

The Planning Authority has ignored, or has not taken sufficient account of the said written submission, in that the planning authority proceeded to adopt a policy objective which is not in compliance with Guidelines to Planning Authorities issued by the Minister under s. 28 of the Planning & Development Act, 2000, specifically the Development Plans Guidelines (2007). The Plan is therefore in breach of s. 31(1)(c) of the Planning & Development Acts, 2000 – 15”.

104. The penultimate page of the 1 April 2016 document referred to the “Decision Sought” and stated inter alia: -

“In light of the foregoing, approval is sought to issue a Draft Ministerial Direction under s. 31 of the Planning and Development Act, as amended . . .”

The wording of a draft direction was set out and reference was made to a copy of a map indicating the relevant lands. Page 5 of the 1 April 2016 document stated the following: -

“A draft Direction for the Sallins Local Area Plan 2016 – 2022 and an accompanying letter to the Chief Executive (copied to the Regional Assembly) are filed in the pouch across from the Minister’s approval.

An early decision is sought in order to ensure compliance with the deadline for issuing a notice in writing to the Planning Authority no later than 4 weeks after the plan is made. Accordingly, a decision should be made by the Minister no later than Tuesday 5 April 2016 to ensure that the letter(s) arrive with the planning authority by the statutory deadline for receipt of Tuesday 5 April 2016”.

105. It is a matter of fact that the foregoing makes reference to the statutory deadline as being Tuesday 5 April 2016. The 1 April 2016 report for the Respondent Minister does not specify any particular time on Tuesday 5 April 2016 by which notice must be served, nor does it use the phrase "close of business" or similar. It is also a matter of fact that no such phrase is used in s. 31(3) of the Planning and Development Act 2000 (as Amended), which is the relevant provision insofar as the time limit for issuing such written notice to a planning authority is concerned. I refer to the foregoing facts because an argument was made by the Applicant in this case that service of the notice, by the Respondent Minister, was in breach of the statutory time limit. That argument was pleaded and that argument was maintained throughout the hearing of this case until certain concessions or, perhaps more correctly, clarifications, were made on Day 4, in the manner I will explain later in this judgment.

4 April 2016 – Additional Briefing Note for Minister

106. Tab R of exhibit SM1 to the affidavit of Mr. McCarthy, sworn 3 November 2016, comprises a document entitled "Additional Briefing Note for Minister". It concerns Material Alteration no. 20 and draws the Respondent's attention to a number of points including the following: -

"The Draft Sallins LAP was prepared to comply with the Core Strategy of the Kildare County Development Plan 2011 – 17 and accordingly included a reduced volume of housing land from that of the previous 2009 LAP (which pre – dated Core Strategy legislation – the Planning & Development Act 2010)".

107. A number of observations can be made in relation to the foregoing. The author is not suggesting that the Applicant's lands were not zoned for residential development in the 2009 LAP. Rather, the author makes the point that a reduced volume of housing land was included in the draft Sallins LAP, compared to the previous 2009 LAP. The foregoing is factually correct. It is also undoubtedly correct that the 2009 LAP predated the Planning & Development Act, 2010 which introduced Core Strategy legislation, applicable to LAPs. Furthermore, it is also a matter of fact that the Draft Sallins LAP was prepared in order to comply with the Core Strategy of its parent plan, specifically the KCDP 2011 – 17. Page 2 of the 04 April report continues as follows: -

"Material Alteration (no. 20) is an attempt to zone lands in excess of that required for the reasonable planned growth of the town under the Core Strategy. The submission by the landowner to the LAP process sought to link the zoning of the residential lands involved to the transfer of the open space zoned lands to the community to '*accommodate pitches for sporting clubs in the town*'. This arrangement is essentially a housing zoning for community gain proposal which the Elected Members appear to have acceded to with the intention of gaining the transfer of private lands into community/recreational use in the future.

It must be noted that there are no guarantees in place for achieving such proposals and the transfer of lands does not have a basis in the zoning proposals or LAP. The open space location is poorly situated relevant to the town, existing residence, and

the future town park identified in the LAP alongside the existing amenity of the Grand Canal.

The Director of Services and his staff reiterated to the Members that decisions on the residential zoning of land must be 'open and transparent', clearly justified on the basis of need and support the aims and strategy of the plan. The Director of Services also indicated that the Ministerial submission on the Draft LAP clearly stated that the Planning Authority must omit Material Alteration (no. 20) to comply with Ministerial Guidelines".

108. Several comments can be made in relation to the foregoing. Having regard to the evidence before this Court, it was not unreasonable for the author to suggest that the landowner sought to link the zoning of the residential lands involved to the transfer of Open Space zoned lands to the local community. The minutes of a meeting of the Board of Directors of the Applicant company, signed by Mr. Seamus McCarthy in his capacity as chair/director, which comprised the first exhibit to Mr. McCarthy's affidavit sworn 3 November 2016, explicitly link the transfer of land to the community "*to the restoration of the zoning of the lands*" and, elsewhere in this judgment, I quote from those company minutes. It was also entirely reasonable for the author to point out that there were "no guarantees" in place for achieving the relevant proposals. No contract or written agreement of any type was put before court in relation to ensuring that a transfer would occur. It can also be observed that the proposal to transfer land to the community seems to have been made by McCarthy Meats Processing Limited which company held itself out as owner of the lands, despite not being the owner, according to Mr. McCarthy's averments in these proceedings. Leaving aside the confusion over ownership, neither McCarthy Meats Processing Limited, nor McCarthy Meats Limited appears to have entered into any written or binding agreement with any party concerning the transfer of lands. In short, an examination of the evidence before the court confirms that the views expressed by the author in the 4 April 2016 report were either statements of fact or views which were reasonable having regard to the facts.

5 April 2016 letter from Minister to the Notice Party

109. On 5 April 2016 Minister Coffey wrote to Mr. Peter Carey, chief executive, forward planning section of the Notice Party. The letter stated the following: -

"Section 31 of the Planning and Development Act 2000 as Amended by the Planning and Development (Amendment) Act 2010

Notice of intent to issue a direction relating to the Sallins Local Area Plan 2016 - 2022

Dear Chief Executive,

I am writing to you in connection with the Sallins Local Area Plan 2016 – 2022 as adopted by the council on 9 March 2016 and request that you bring this notice to

the attention of the elected members of the county council on or before Tuesday 5 April 2016.

TAKE NOTICE that I am considering issuing a direction pursuant to s. 31 of the Planning and Development Act 2000, as Amended. A draft of the proposed is attached to this letter. As appears therefrom, I have formed the provisional opinion (i) that the planning authority has ignored or not taken account of a submission made on my behalf on 8th January 2016 on the Proposed Material Alterations to the Draft Sallins Local Area Plan 2016 – 2022; (ii) that the plan as adopted is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act 2000, as Amended. The reasons for the proposed direction are set out in the attached draft direction.

Background

My department wrote to your Council, under my direction as statutory consultee under the Planning Acts, in relation to the proposed material alterations to the Draft Sallins Local Area Plan in December 2015. Kildare County Council was advised that the proposed material alteration no. 20 were not in compliance with the requirements of Ministerial Guidelines issued under s. 28 of the Planning & Development Act 2000 (specifically the Development Plan Guidelines, 2007).

Despite the department's concerns on the matter, the members of the planning authority have decided not to address this matter in the now adopted plan. Accordingly, and as detailed above, in making such a plan, the members of the planning authority have failed in their statutory duty under s. 19, s. 20 and s. 28, namely, being restricted to considering the proper planning and sustainable development of the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.

MEASURES PROPOSED UNDER THE DRAFT DIRECTION

In light of the foregoing, the plan which sets out the objectives for Sallins is to be amended as set out in the attached draft direction.

Please note that the provisions of the draft direction will not now come into effect until the s. 31 procedure has been completed.

PROCEDURAL REQUIREMENTS

I would draw your attention to the public consultation obligations under s. 31 of the Planning and Development Act, 2000 as amended by the Planning and Development (Amendment) Act 2010, and the initial requirement for you, as manager, under s. 31 (7) to publish notice of the draft direction no later than 2 weeks after receipt of this notice. I look forward to receipt of the report which has to be prepared by you on foot of this public consultation under s. 31(8), including on any views of the elected members, to be furnished to me no later than 4 weeks after the public consultation process is completed, for my further consideration.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway.

Yours sincerely”.

Draft direction

110. The Respondent’s letter to the Notice Party dated 5 April 2016 enclosed a draft Direction together with a statement of reasons and these were as follows: -

“DRAFT DIRECTION

DIRECTION IN THE MATTER OF S. 31 OF THE PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED BY S. 21 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010) SALLINS LOCAL AREA PLAN 2016 – 2022 DIRECTION 2016.

“Local Area Plan” means the Sallins Local Area Plan 2016 – 2022.

“The Planning Authority” means Kildare County Council.

WHEREAS the functions of the Minister for the Environment, Community and Local Government under the Planning and Development Acts 2000 to 2014, other than Chapter 1, of part VI of the Planning and Development Act 2000, have been delegated to the Minister of State at the Department of the Environment, Community and Local Government pursuant to the Environment, Community and Local Government (Delegation of Ministerial Functions) Order 2014 (S.I. 524 of 2014).

WHEREAS the Minister of State at the Department of the Environment, Community and Local Government is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that: -

- (i) Kildare County Council in making the Sallins Local Area Plan 2016 – 2022, has ignored or has not taken sufficient account of the submissions made by the Minister for the Environment, Community and Local Government in January 2016,

and
- (ii) The Sallins Local Area Plan 2016 – 2022 is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act 2000 (as Amended).

NOW THEREFORE, in exercise of the powers conferred on him by s. 31 of the Planning and Development Act 2000 (as Amended), the Minister of State at the Department of the Environment, Community and Local Government hereby directs as follows: -

- (i) This Direction may be cited as the Planning and Development (Sallins Local Area Plan 2016 – 2022) Direction 2016.

- (ii) The county council Kildare county is hereby directed to take the following steps with regard to the Sallins Local Area Plan 2016 – 2022 (“the Local Area Plan”).
 - (a) The map entitled Sallins LAP 2016 – 2022 Map 1 “Land use zoning objective map” March 2016 which sets out the zoning objectives for the town of Sallins in the Sallins Local Area Plan 2016 – 2022 is to be amended by removing the zoning objectives: -
 - (i) For lands located east of the Clane Road (R407) and stretching to the rear of existing residential development at the north eastern periphery of Sallins with the zonings – objective C: New Residential, objective E: Community & Educational and objective F: Open Space & Amenity (Material Alteration no. 20).

For ease of reference a copy of the Sallins LAP 2016 – 2022 map 1

“Land use zoning objective map” (March 2016) indicating the subject lands (outlined in a dashed red line) is attached as Appendix 1 to the direction.

The effect of this amendment will be that the lands identified in (i) above revert to their status as per the Draft Sallins Local Area Plan 2016 - 2022 (June 2015). For ease of reference a copy of the Draft Sallins LAP 2016 – 2022 map 1 “Land use zoning objective map”

(June 2015) is attached as Appendix 2 to the Direction.

STATEMENT OF REASONS

- (i) On 8 January 2016, a written submission on the Proposed Material Alterations to the Draft Sallins Local Area Plan was made to Kildare County Council on behalf of the Minister for the Environment, Community and Local Government. This submission advised Kildare County Council that Proposed Material Alteration no. 20 was not in compliance, (sic) the requirements of s. 28 Ministerial Guidelines (specifically the Development Plans Guidelines 2007) and its statutory responsibilities.
- (ii) Kildare County Council was advised that this specific proposed Material Alterations to the Draft Sallins Local Area Plan 2016 – 2022 should not be accepted by the planning authority in order to ensure compliance with the Minister’s guidelines.
- (iii) Despite this, on 9th March, the Elected Members voted by resolution to adopt proposed Material Alteration no. 20 as previously placed on public display.

Zonings east of the Clane Road (R407) (Material Alteration no. 20)

This Material Alteration (no. 20) relates to lands to the east of the Clane Road (R407) and stretching to the rear of existing residential development at the north – eastern periphery of Sallins. The Material Alteration seeks to re – zone a significant land parcel to three new zonings consisting of “E – Community & Educational (1.2 Ha), “F – Open Space & Amenity (14.5 Ha) and “C – New Residential (12 Ha). The western portion (proposed Open Space) of the Material Alteration site includes

lands originally proposed as “H – Industry & Warehousing” in the Draft LAP that were within the identified LAP boundary.

Section 3.4.3 of the Kildare CDP 2011 – 2017 states that the growth of Sallins: - *“will be controlled to limit pressure on services, the environment and unsustainable commuting patterns”*.

The Kildare CDP 2011 – 2017 details a population target of 4,550 for 2017 (Table 3.3) and a housing target of 527 for the 2006 – 2017 period which equates to 1.9% of the county allocated growth (27,982 units).

The Sallins LAP indicates a housing unit target of 240 units for the 2016 – 22 period (Table 3 of the LAP). The additional residential zoning proposed could potentially yield a further 365+ housing units for Sallins generating a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed residential zoning is therefore not warranted in terms of the core strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s. 19(2) of the Planning & Development Acts 2000 – 15 which requires that: -

“A local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan”.

The peripheral and greenfield nature of the site is also at odds with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under s. 28. Specifically, decisions to zone land *“must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan”*. (s. 4.10, pg. 41 of the Guidelines). Material Alteration no. 20 is contrary to the main aim of the LAP to consolidate Sallins through developing the centrally located sites within the town. It is not justified on the basis of housing need, policy, or existing supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.

In particular, a residential zoning to the north east of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands whereby such zoning should *“extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. ‘leapfrogging’ to more remote areas should be avoided)”* (s. 4.19 of the Development Plans Guidelines). The proposed zoning is not justified in relation to specified zoning criteria and would be contrary to the Ministerial Guidelines.

In light of the above, the Minister is of the opinion that the planning authority has ignored, or has not taken sufficient account of the said written submission, in that

the planning authority proceeded to adopt a policy objective which would be inconsistent with national government policy (the Development Plans Guidelines, 2007) and the requirements of s. 19 (2) of the Planning and Development Acts 2000 – 15 and it is not consistent with the Core Strategy of the Kildare County Development Plan 2011 – 17.

- (2) The decision by the members to alter the policy in regard to the zoning objectives as outlined in this direction does not provide for proper planning and sustainable development and therefore the Sallins Local Area Plan 2016 – 2022 is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act 2000 (as Amended).

GIVEN under my hand,
Minister for Housing, Planning and Coordination of Construction, 2020
This day of April 2016”.

111. The maps referred to by the Respondent in the draft Direction and Statement of Reasons accompanied same and were exhibited by Mr. McCarthy behind Tab E of the booklet of exhibits to his 3 November 2016 affidavit.

The Applicant does not challenge the draft Direction of 05 April 2016

112. It has to be borne in mind that, in the present proceedings, the Applicant does not seek to impugn the issuing of the draft Direction on 5 April 2016. No relief in respect of the draft Direction is sought in these proceedings. Notwithstanding the foregoing, the Applicant claims, in para. 42 of the affidavit sworn by Mr. McCarthy on 3 November 2016, that “. . . *the Draft Direction was delivered after close of business on 5 April and outside the time limit for delivery of same*”. I am satisfied that, as a matter of fact, the Respondent’s letter, draft direction, statement of reasons and accompanying maps were issued by the Respondent to the Notice Party at 17:01 on 5 April 2016. In para. 40 of his 3 November affidavit, Mr. McCarthy refers to an email from the Respondent to the Notice Party dated 5 April 2016 which was sent at 17:01 attaching a copy of the Respondent’s letter and draft direction. I am also satisfied that, as a matter of fact, the Notice Party’s office hours normally end at 17:15. It is also a matter of fact that 5 April 2016 is the final day of a four – week period commencing on 9 March 2016. It will be recalled that it was four weeks earlier, on 9 March 2016, that the elected members adopted a draft LAP for Sallins incorporating what was called Material Alteration 20 in respect of the Applicant’s lands.

Proposal to transfer land *subject to* obtaining zoning – Company Minutes 21 Oct 2016

113. I have had sight of a copy of the minutes of a meeting of the board of directors of McCarthy Meats Limited, held on 21 October 2015 (due to a typographical error, it should have stated “2016”), which is of relevance to the foregoing issues. Those minutes comprise Exhibit “SM1”, found at tab A of Mr. McCarthy’s 3 November 2016 affidavit. The following are certain extracts from those minutes under the heading “4. Business Discussed”:-

“4.1 Seamus McCarthy updated the meeting on the recent developments relating the draft Local Area Plan and the zoning of the lands owned by the company at Clane Road, Sallins, Naas, Co. Kildare (the “Lands”). In particular, the following issues were discussed at the meeting: -

4.1.1 It was noted that if the existing zoning of the Lands is not retained, then this would result in a significant devaluation of the Lands and the value of the company;

4.1.2 It was noted that the proposal had the support and backing of Sallins GAA Club and Sallins Soccer Club if the existing zoning of the lands is to be retained:

4.1.3 It was noted that the company had offered to (i) donate 25 acres of the Lands to Sallins GAA Club and (ii) donate 5 acres of the Lands to Sallins Soccer Club for their own use and (iii) The Sallins community council will receive 7 acres;

4.1.4 It was noted that the Company has furnished letters to Sallins GAA Club, Sallins Soccer Club and Sallins Community Council whereby *the company agreed to transfer the 37 acres of the land in the manner set about above subject to the restoration of the zoning of the lands* as set out in the Plan adopted by the member on the 9th day of March 2016.

4.1.5 Seamus McCarthy disclosed to the meeting the legal advice dated 20th October 2016 together with a fee estimate of the judicial review which had been received from the company’s solicitors regarding the issue of a judicial review to the s. 31 direction issued by Minister Coveney, the Minister for Housing, Planning and Local Government.

4.1.6 Copies of the letters as set out at 4.1.4 above were produced to the meeting.

4.1.7 The Legal Advice and fee estimate received was produced to the meeting.

4.1.8 The implications of signing the letter and the legal advice received were considered and the board concluded that the best method of retaining the existing zoning of the Lands is to proceed in the manner proposed by way of a judicial review to the s. 31 direction issued by the Minister . . .” (*emphasis added*)

114. The aforesaid minutes are said to relate to a meeting which took place on 21 October “2015” at 11 a.m. but the fact that they make reference to events of 9 March 2016 and 20 October 2016 indicates that the meeting, in fact, took place on 21 October 2016. For this reason, I am satisfied that 2015 should have stated 2016. In light of the contents of the foregoing minutes, I am satisfied that the Applicant was, at all material times, willing to donate a portion of lands for community use “subject to” (i.e. in return for) securing the zoning which previously pertained in the 2009 LAP.

The Applicant’s claim that the proposal to transfer land had nothing to do with zoning

115. In para. 16 of the affidavit sworn by Mr. McCarthy on 11 October 2018, he states that the arrangement to transfer land free of charge to the community “*had nothing whatsoever to*

do with the zoning decision of Kildare County Council, and is a private arrangement and understating between the Applicant and the Community and done for altruistic reasons, as the Applicant is a resident and member of that community and any allegation that the submission of Mr. Mulcahy is an application for zoning offering any exchange of lands in consideration for same is baseless, disingenuous and scurrilous . . .". The foregoing averment is impossible to reconcile with the contents of the minutes of the meeting of the Applicant from which I have quoted above. The minutes prove the very opposite of what Mr McCarthy claims. Far from being the case that the proposed transfer of land had nothing to do with a zoning decision, zoning had everything to do with the proposed transfer in that the commitment to transfer the land was conditional on achieving specific zoning objectives. The aforesaid minutes were signed by Mr. McCarthy in his capacity as chair/director of the Applicant, so there can be no doubt about the fact that Mr McCarthy was aware of the following when he swore his 11 October 2018 affidavit. Firstly, the Applicant's agreement to transfer 37 acres of land was explicitly stated to be "*subject to the restoration of the zoning of the lands*". Secondly, the explicit objective of the present proceedings was to retain the zoning of the Applicant's lands which pertained under the 2009 LAP. That being so, the averment in para. 16 of the affidavit sworn by Mr. McCarthy on 11 October 2018 that the arrangement to transfer land free of charge to the community "*had nothing whatsoever to do with the zoning decision of Kildare County Council*" is plainly incorrect and Mr McCarthy must have known that to be the case when he swore his affidavit.

Publication of notice of the draft direction

116. I am satisfied that, as a matter of fact, the Notice Party received, on 5 April 2016, by email at 5.01pm, notification from the Respondent, dated 5 April 2016, that he was considering issuing a Direction pursuant to s. 31 of the Planning and Development Act 2000 in respect of the Sallins LAP 2016 – 22. The said notification was in the form of a letter from the Respondent addressed to Mr. Peter Carey, chief executive, forward planning section, Kildare County Council dated 5 April 2016, a copy of which appears behind Tab S of Exhibit SM1 of Mr. McCarthy's affidavit sworn 3 November 2016. Having regard to the averments made by Mr. Kenneth Kavanagh, a senior executive officer in the Notice Party's planning department, in his affidavit sworn on 4 April 2017, I am satisfied that notice of the draft Ministerial direction was published in the following manner.
117. On 6 April, the Notice Party published notice of the draft direction by placing a copy of same at the public counter at the Notice Party's offices and by sending it by email to the Mayor and elected members. Notice of the draft direction was also published on Kildare County Council's website between 6 April and 8 April 2016. The issuing of the draft direction was also publicised by the local KFM Radio in postings on its website on 8 and 11 April 2016. Mr. Kavanagh sent a further email, dated 8 April 2016, to the Mayor and to the Naas Municipal District Elected Members advising that the draft direction could be viewed at the Notice Party's offices, on its website, and that the draft direction would be published in the local newspaper, specifically the "Leinster Leader" the following week. On 12 April 2016 notice of the draft direction was published in the Leinster Leader newspaper as well as being published on Facebook and Twitter. Furthermore, Councillor Robert Power

made a posting in relation to the draft direction on his website on 12 April 2016. On 14 April 2016, Kildare FM publicised on its website a public meeting due to take place in Sallins at 8 p.m. that night, in connection with the draft direction and on 15 April 2016 Kildare FM posted details on its website of the meeting which had taken place the previous evening. With regard to publication of the draft direction, I also accept the following uncontroverted averments made by Mr. Kavanagh in para. 14 of his affidavit sworn on 4 April 2017: -

“In addition in circumstances where the draft Direction had been publicised electronically from the 6th April 2016, the time period for the making of submissions was deliberately framed in the newspaper notice to ensure that any submission made in response to the electronic publication would not be ruled out of consideration by virtue of having been received too early. This is a difficulty which frequently arises where the local newspaper is published on a weekly rather than a daily basis, as matters will have already gained public currency by being published on websites or other broadcast and people who are concerned may have responded before the newspaper notice appears. I should also confirm that the draft Direction was available for inspection at all material times”.

Submissions in response to the publication of notice of the draft Direction

118. It is a matter of fact that some 2,149 parties responded to the notice of the draft Direction and made submissions on the draft Direction. It is also a fact that one of the submissions made in relation to the draft direction was from McCarthy Meats Processing Limited, and it is to that submission I now turn.

15 April 2016 - Submission by David Mulcahy Planning Consultants Ltd.

119. By letter dated 15 April 2016, David Mulcahy Planning Consultants Ltd. wrote to Ms. Veronica Cooke of the Notice Party’s planning section in the following terms: -

“Re: Sallins Local Area Plan 2016 – 2022 (Direction 2016)

Dear Madam,

Please find enclosed a submission to the Draft s. 31 Ministerial Directive on behalf of McCarthy Meats Processing Ltd. who are the owners of the entirety of the subject lands in question. . .”

120. One of the arguments made in the present proceedings is that the Applicant received inadequate notice, including in respect of the draft direction. That argument was pleaded and the case was opened on the basis that this was an argument which the Applicant relied upon. The Respondent engaged with this argument and it was not until day 4 that certain clarifications or concessions touching on this argument were made. Lest I be mistaken to describe what was said to the court as a concession, it is appropriate to set out certain findings of fact in relation to this issue. Para. 12 of the Applicant’s statement of grounds includes, inter alia, the following: -

“The owner of the lands in question McCarthy Meats Limited, ought to have been consulted as the effect of the revised zoning has serious and permanent financial

consequences for the company and the use of the lands which are company assets”.

The relevant verifying affidavit in respect of the Applicant’s statement of grounds, was sworn by Mr. Seamus McCarthy on 3 November 2016. The 15 April 2016 submission by David Mulcahy Planning Consultants was expressed to be on behalf of McCarthy Meats Processing Limited. Mr. Seamus McCarthy is a director of that company. Therefore, I am entitled to take it that Mr. McCarthy was well aware of the fact that David Mulcahy Planning Consultants was making a submission on behalf of McCarthy Meats Processing Limited and that Mr. McCarthy was well aware of the contents of that submission. Thus, Mr. McCarthy was aware, at the time of the 15 April 2016 submission, that the Notice Party was being misinformed as to the entity which owned the relevant lands. It will be recalled that this was not the first submission by David Mulcahy Planning Consultants which was made on behalf of McCarthy Meats Processing Ltd. Earlier in this judgment, I referred to the 11 August 2015 submission. That earlier submission, the fact and content of which Mr. Seamus McCarthy must have been aware, also incorrectly identified the owner of the Applicant’s lands as being McCarthy Meats Processing Limited. Given the fact that Mr. Seamus McCarthy is a director of both companies, this fundamental error, made on 11 August 2015 and compounded on 15 April 2016, is difficult to understand. It certainly has not been explained in these proceedings. It is indisputable however, that the Notice Party received, on or about 19 April 2016 (as the Notice Party’s “date stamp” confirms), a submission in respect of the relevant lands which was made on behalf of a party which asserted the entire ownership of those lands. There is nothing in the evidence before this Court which would cause the recipient of the submission to doubt the veracity of the assertion as to ownership. Having carefully considered the evidence, the court cannot conclude that McCarthy Meats Limited had a different submission which it would have made, but for the alleged lack of notice of the draft direction. On the contrary, the director of the Applicant was very well aware of the contents of the submission which was, in fact made and was well aware that the Respondent had issued a draft direction. The foregoing is the relevant factual background insofar as the clarification made on this issue by Counsel on Day 4 is concerned.

Specific submissions and the facts they ignore

121. As to the contents of the submission by the planning consultant, it comprises material under the headings Introduction, Reasons for Draft Direction, Growth of Sallins, Population & Housing Target, Peripheral and Greenfield Nature, Industrial/Warehouse Zoning and Conclusion, with certain maps being attached. The 15 April 2016 submission contains, inter alia the following:-

“The draft LAP incorrectly identifies Sallins as a Small Town . . .” (p.4, s 2.2).

“. . . Sallins should be recognised as a Moderate Sustainable Growth Town with associated increased growth levels” (p. 4, s. 2.2).

“The 2011 Census recorded a 39% growth in the population of Sallins between 2000 – 2011 (during a significant recession period) and this growth rate is not

reflected in the very conservative 1.9% growth rate applied to future growth in the LAP". (p. 5, s. 2.2).

"Given the Development Plan is based on dated population Census figures it is entirely unreasonable that the LAP should be consistent with same in this instance". (p. 6, s. 2.2).

122. The foregoing submissions ignore certain incontrovertible facts. As to the first of the above submissions, it is a fact that Sallins was then designated as a Small Town in the "parent" Development Plan, being the KCDP 2011 – 17 and this remains the case. Regarding the second of the foregoing submissions, Sallins was not then, and is not now, designated as a Moderate Sustainable Growth Town. As regards the third submission, it is a fact that the County Development Plan allocated a target population representing 1.9% growth for Sallins and did so in the context of making specific allocations throughout the entire county of Kildare in respect of every settlement type and individual settlement. The fourth submission, that it was "*entirely unreasonable that the LAP should be consistent with*" the parent County Development Plan, is a submission which ignores a specific statutory obligation, namely, the provisions of s. 19(2) of the Planning and Development Act 2000 which mandates that a Local Area Plan "shall be consistent with" the objectives of the Development Plan including its core strategy.

Peripheral and greenfield nature – the planning consultant's view

123. Section 2.3 on internal p. 6 of the 15 April 2016 submission began by summarising part of the reasons for the draft direction, following which certain submissions were made in response. The following is a verbatim quote from the submission at Section 2.3, beginning with a setting out of certain of the Minister's reasons:-

"2.3 Peripheral and greenfield nature

The peripheral and greenfield nature of the site is at odds with Ministerial Planning Guidance (s. 4.10 of Development Plan Guidelines, 2007). In respect of main aim in the LAP to consolidate Sallins through developing the centrally located sites within the town and the lack of housing need. It is further argued that the zonings are contrary to the sequential approach whereby s. 4.19 of the Development Plan Guidelines recommends that zoning should extend out from the centre, with lands closest to the core and public transport routes being given preference i.e. leapfrogging should be avoided.

Firstly, in relation to "peripheral" and "greenfield" development, the SRDUA Guidelines 2009 specifically recognise peripheral, greenfield sites in large towns (which Sallins qualifies as) where new infrastructure is required as being suitable for residential development. The guidelines even specify net residential densities in the general range of 35 – 50 dwellings per hectare for such lands.

'These (greenfield) lands may be defined as open lands on the periphery of cities or larger towns whose development will require the provision of new

infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities'. (s. 5.11)".

Submission based on the Applicant's lands being both "peripheral" and "greenfield"

124. It is clear from the foregoing submission, (the contents of which, according to the evidence, Mr. McCarthy was aware of and approved in his capacity as the director of the company which made the submissions via a professional planning consultant), that no issue is taken in relation to the appropriateness of the descriptions "peripheral" and/or "greenfield" insofar as the relevant lands, owned by the Applicant, are concerned. On the contrary, an argument is made that, pursuant to certain Guidelines, peripheral greenfield sites in larger towns are recognised as being suitable for development. The foregoing argument is also based on the contention that Sallins qualifies as a larger town. In short, it is a matter of fact that the foregoing submission is made on the basis that the terms "peripheral" and "greenfield" apply to the lands in question, being those lands owned by the Applicant. I am satisfied, having carefully considered all the evidence, that the use of the terms "peripheral" and "greenfield" were accurate to describe the Applicant's lands. Insofar as the Applicant seeks to argue that the use of the either term resulted in the Respondent being misinformed and relying on an error insofar as issuing the Direction challenged in these proceedings is concerned, the evidence does not support such an argument.

125. Page 7 of the 15 April 2016 submission by David Mulcahy Planning Consultants contains, inter alia, the following: -

"The Kildare Co. Co. chief executive's report noted at Sub. 2 (b) that the lands where the alternative industrial/warehousing is proposed: -

'is located within walking distance (approx. 1.5km) of the train station and other public transport servicing the town. With the construction of the bypass this site will be easily accessed by car and public transport while causing minimal traffic disruption within the town centre'

If a balanced view is applied, clearly this should also apply to the adjoining lands which are zoned for residential development in Alteration 20.

The zoned lands in question are contiguous to existing residential zoned lands. They form a natural extension of the said residential zoned lands and do not therefore represent leapfrogging . . ."

126. The location of the Applicant's lands is not in doubt. The evidence demonstrates that, at all material times, the Respondent was aware of their location. It is also a matter of fact that the Applicant's lands are not as close to the town centre of Sallins as other sites identified in the draft LAP of June 2015 as being suitable for residential development. This fact is acknowledged on p. 8 of the submission which proceeds to argue, not that the town centre sites have not been appropriately identified due to their location, but that

town centre sites may not be developed due to the investment required. The following is an extract from p. 8 of the submission: -

“In relation to the Sallins town centre the draft LAP identifies a number of town centre sites for development including residential development. However, the reality is that the Odlums site would require a significant investment which is highly unlikely in the current climate when more affordable and less restrictive lands are available and the lands to the south of the rail station are occupied. The current LAP itself recognises that such lands may not be developed”.

127. Section 3 on p. 9 of the 15 April 2016 submission argues that the provision of Industrial/Warehousing zoned lands fronting the Clane road was “wholly inappropriate”. Page 10 of the submission under the heading “Conclusion”, once again acknowledges the fact that the Applicant’s lands can properly be recognised as being both peripheral and greenfield. This is clear from the argument made in s. 4.0 on p. 10 of the submission which includes inter alia the following: -

“The SRDUA Guidelines 2009 specifically recognised peripheral greenfield sites as being suitable for new development”.

128. Page 10 again acknowledges the fact that sites have been identified as suitable for residential development, which are closer to the centre of the town of Sallins than the Applicant’s lands. The argument deployed in the submission is not to suggest that such sites are not closer to the town centre than the Applicant’s lands, but to suggest that because interest in developing the town centre sites has not materialised in the past, it will not in the future. This is clear from the penultimate paragraph on internal p. 10 of the submission which begins:-

“It must be recognised that zoned lands closer to the centre of Sallins town centre are not readily available for development and have not attracted any development heretofore”.

May 2016 Chief Executive’s report

129. The chief executive of the Notice Party prepared a report in relation to the submissions received, following the publication of the draft Direction. The report was entitled: - “Sallins Local Area Plan 2016 – 2022 – Chief Executive’s Report pursuant to a Notice of Intent to issue a Ministerial Direction” and was dated May 2016. Internal p. 8 of the report referred to the 2,149 submissions or observations which had been received within the prescribed timeframe in respect of the draft direction. A list of the parties who made submissions was set out in s. 3 of the report and their views were set out in s. 4. Internal p. 9 of the Chief Executive’s report referred to its statutory content as follows: -

“Pursuant to Section 31 (8) of the Planning and Development Act 2000 (as amended), the Chief Executive’s Report is required to be prepared and furnished to the Minister and the Elected Members no later than four weeks after the expiry of the public consultation period i.e. on or before 17th May 2016.

The Chief Executive's Report shall:

- (a) Summarise the views of any person who made submissions or observations to the Planning Authority;
- (b) Summarise the views and recommendation (if any) made by the members of the Regional Assembly and the Planning Authority;
- (c) Make recommendations in relation to the best manner in which to give effect to the Draft Direction". (emphasis added)

130. I am satisfied, on the evidence, that the Chief Executive's report was furnished to the Respondent. Internal p. 35 of the Chief Executive's report, under the heading "Summary of submissions" began as follows: -

"4.0 Introduction

A total of 2,149 submissions were received pursuant to a Notice of Intent to issue a Draft Ministerial Direction in relation to Sallins Local Area Plan 2016-2022. All, with the exception of the submission from An Taisce (no. 11), were opposed to the Draft Ministerial Direction.

- Submissions 1-6 are from members of Kildare County Council and from a former member of Kildare County Council, now a TD.
- Submissions 7-68 can be classified as independently drafted submissions from individuals or groups.
- Submissions 69-946, 947-1344, 1345-1763 and 1764-2149 are round robin or standard content submissions, with a number including additional handwritten views
- No submission was received from the Eastern and Midlands Regional Assembly".

131. Section 4.2, comprising internal pages 36 to 38 of the Chief Executive's May 2016 report summarised the views and recommendations made by the elected members of the Notice Party and the views and recommendations of a former elected member who had become a TD. Among other things, the last bullet point, summarising the views and recommendations of Cllr. Power, stated inter alia that, with regard to Material Alteration No.20: -

"There is overwhelming support from both the Naas Municipal District and the wider community in Sallins".

Section 4.3 summarised the views of all parties who made submissions or observations.

Specific reference to the prior zoning of the Applicant's lands in the 2009 LAP

132. Section 5 dealt with the chief executive's response and recommendation. Under the heading "Community, Recreation and Education Facilities", s. 5.1.4 contained inter alia, the following was stated:-

"Under the Sallins Local Area Plan 2009, the MA 20 lands were subject to zoning objectives F1 "Open Space and Amenity", B "Residential", E "Community and Educational" and I "Agricultural". This zoning was introduced by the elected members of Kildare County Council during consideration of the Draft Plan. The then County Manager recommended against the zoning of these lands due to the peripheral nature of the site. In this regard, the 2009 LAP predated the Core Strategy legislation". (emphasis added).

The reference to "MA 20" is plainly to Material Alteration 20 which concerns the Applicant's lands. It is clear from the foregoing that the Chief Executive of the Notice Party informed the Respondent of the fact that the Applicant's lands were zoned, including for residential development, under the 2009 Sallins LAP. The Respondent was not given incorrect information. What the Respondent was told was factually correct and the foregoing is of considerable significance given the submission made by Counsel for the Applicant to the effect that the Respondent was mistakenly informed that the Applicant's lands were *not* zoned for residential development in the 2009 LAP. The evidence in this case wholly undermines that submission. In the manner explained above, this was a report which, under Section 31(8) of the PDA 2000 had to be furnished to the Minister and I am satisfied that, as a matter of fact, it was. Thus, it was before the Respondent prior to the Direction of 8 August being issued and evidences that the Minister was not misinformed as to the prior zoning status of the Applicant's lands under the 2008 LAP.

It will also be recalled that the Respondent was aware, in January 2009, that the Applicant's lands had not been zoned in the original draft (published in 2008) of what became the 2009 Sallins LAP. In fact, the Respondent made a submission to the Notice Party, dated 22 January 2009, in respect of what was then a proposed material alteration to the draft Sallins Local Area Plan 2008 – 2014 (which ultimately became the 2009 Sallins LAP). That submission has been referred to earlier in this judgment. The Respondent's 22 January 2009 submission essentially made three points. Firstly, there was no proven need to zone an additional 30 acres for residential development, secondly, the proposed residential zoning would amount to overzoning contrary to the 2007 Guidelines and, thirdly, the Respondent was concerned that the additional residential zoned land was in a relatively peripheral location somewhat distant from the town centre and away from the railway station, whereas the National Spatial Strategy and planning guidelines indicate a need to create more compact urban settlements and to promote public transport use.

Sallins LAP 2009 pre-dated the Core Strategy legislation

133. It is a matter of fact, as correctly pointed out by the Chief Executive in s. 5.1.4 on internal p.58 of his report, that the 2009 LAP for Sallins predated what the Chief

Executive referred to as the Core Strategy legislation. The following is the final paragraph on internal p. 58 of the Chief Executive's report:-

"During the preparation of the Draft Sallins Local Area Plan 2016-2022, it was identified that the capacity of residentially zoned land contained in the 2009 Sallins LAP exceeded the growth targets for Sallins contained in the Core Strategy of the Kildare County Development Plan 2011-2017. The Draft Sallins Local Area Plan 2016-2022 sought to be consistent with the Core Strategy of the County Development Plan, to reflect the designated role and function of Sallins as a small town and to address the over-zoning provisions of the previous LAP. In preparing the Draft Sallins LAP 2016- 2022 the view was taken by the Chief Executive that the subject lands are peripheral to the settlement and would militate against the consolidated development of Sallins into the future. On this basis it was considered necessary to omit the residential zoning and associated amenity and community zonings at the location of MA 20 from the Draft LAP, and to focus new residential development closer to the village core, in line with the sequential approach advocated by national policy and guidance issued under Section 28 of the Planning and Development Act".

134. A consideration of the evidence demonstrates that the foregoing is accurate, being either statements of fact or reasonable views having regard to the facts. Furthermore, the foregoing paragraph makes clear the fact that the Applicant's lands (being the MA 20 lands) were zoned residential under the 2009 LAP but in preparing the draft of its successor, it was considered necessary to omit the residential zoning and associated amenity and community zonings at the location of MA 20 from the Draft LAP. The reason for same is also given, namely to focus new residential development closer to the village core, in line with the sequential approach. Once again, this is evidence which wholly undermines the submission that the Minister was wrongly informed that the Applicant's lands were not previously zoned (including for residential development) under the 2009 LAP.

135. Internal p. 59 of the Chief Executive's report contained s. 5.15 which began as follows:-

"5.1.5 Material Alteration No. 20 (MA 20)

MA 20 remains contrary to the development strategy for Sallins for the reasons as set out in the Chief Executive's Report on the Draft LAP (dated 11th September 2015) and the Chief Executive's Report on the Proposed Material Alterations to the Draft LAP (dated December 2015) as reinforced by the submission received from the DECLG.

The addition of 12.1 Ha (circa 365 units/900 people) of residential land at the north eastern periphery of Sallins (along with the zoning of lands 'E - Community and Education'), remote from the town centre in an isolated area to the rear of a large tract of proposed open space, is considered to be contrary to proper planning and sustainable development.

The Sallins Local Area Plan indicates a housing unit target of 240 units for the Plan period (2016- 2022). The additional residential zoning proposed under MA 20 alone which comprises 12.1 Ha, could potentially yield a further 365+ housing units for Sallins. The proposed residential zoning is not consistent with the Core Strategy of the Kildare County Development Plan 2011-2017 or with the Draft Kildare County Development Plan 2017-2023 (published May 2016). As highlighted in the draft Ministerial Direction the adopted Plan is therefore not in compliance with Section 19 (2) of the Planning and Development Acts 2000 (as amended) which requires that 'a local area plan shall be consistent with the objectives of the development plan, its core strategy and any regional spatial and economic strategy that apply to the area of the plan'.

Having regard to the foregoing, the Department stated in its submission dated 8th January 2016 that *'the Planning Authority must omit the proposal from the Draft LAP in order to ensure its compliance with Ministerial Guidelines'*.

The zoning of the MA 20 lands is considered to be contrary to the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DECLG (2009) and the accompanying Urban Design Manual, due to the peripheral location of the lands. As highlighted in the draft Ministerial Direction, decisions to zone land 'must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy for the plan' (Section 4.12 of the Guidelines refers). MA 20 is not justified on the basis of housing need and is at odds with the main aim of the LAP to consolidate Sallins.

A detailed Urban Design and Public Realm Strategy has been prepared for Sallins town centre. MA 20 will undermine the implementation of this strategy, as it will reinforce an undesirable pattern that has emerged over the past 20 years, by allowing development at the periphery rather than focusing new development into the heart of Sallins in the first instance, moving out sequentially thereafter.

Finally, MA 20 disregards the economic strategy in Chapter 9.0 'Enterprise, Industry and Economic Development' of the Draft LAP, which seeks to provide for "Industrial and Warehousing" development in Sallins. The subject lands are the only lands which were identified for this type of development in the Draft LAP.

In relation to the open space aspect, the Sallins Local Area Plan 2016-2022 as adopted, incorporates 16.5 hectares of new "Open Space & Amenity" zoned lands to the west of the Town Centre. These lands are strategically positioned at a location that is accessible to the community and is contiguous to the natural landscape corridors provided by the River Liffey and the Grand Canal. The lands are within the envelope of Sallins that will be created by the approved Sallins by-pass and will be accessible from a proposed link road to Sallins Town Centre and along the Grand Canal towpath. These lands are considered to be the optimal location for open space and amenity, with linkage along both the Liffey and the Grand Canal,

accessibility from the approved future road network, and with opportunities for the development of green routes along both the Liffey and Canal corridors in the future.

Kildare County Council is actively investigating opportunities for the delivery of recreational and amenity facilities to the west of the town centre to serve the growing population of Sallins and will seek to work with a range of public and private sector stakeholders to ensure the delivery of attractive and accessible amenity areas that can provide a value to the community of Sallins and to the wider area.

5.1.6 Other Plans

It is noteworthy in the context of this Direction that Kildare County Council published a Draft County Development Plan in May 2016, which will be considered by the members of Kildare County Council in October / November 2016. Land use plans for small towns, villages and rural settlements are under consideration as part of the Draft County Development Plan. A review of the Clane Local Area Plan has commenced and Kildare County Council is also progressing Local Area Plans for the higher order settlements of Leixlip, Celbridge, Naas and Athy.

5.2 Chief Executive's Recommendation

The Chief Executive recommends that the lands proposed for rezoning under MA 20 revert back to the Draft Sallins LAP i.e. H: Industry and Warehousing (Refer to Map 1 attached). The Chief Executive proposes to actively pursue the objective of the Sallins LAP 2016-2022 to deliver a public park for sports, recreation and amenity purposes and education lands on sites zoned E1 and F1 as identified in the Draft Sallins LAP 2016-2022".

136. It is a matter of fact that the Respondent had the foregoing information available to him prior to issuing the Direction which is challenged in the present proceedings.

The reference to 16.5 hectares

137. I am also satisfied that the 16.5 Ha which is referred to in s. 5.1.5 of the Chief Executive's report is the same 16.5 Ha which is identified by Mr. Michael Kenny, senior planner of the Notice Party in his 11 July 2016 letter to the Respondent, which letter I will refer to later in this judgment. In his 4 April 2017 affidavit, Mr. Kenny takes issue with the assertion made by Mr. Seamus McCarthy that the Notice Party has "deliberately misrepresented" the size of the lands zoned Open Space and Amenity (F) from 14.9 to 16.5 Ha, as the Applicant alleges. This issue is dealt with in some detail between paras. 14 and 16 inclusive of Mr. Kenny's affidavit sworn 4 April 2017 and I accept Mr. Kenny's averments. Given this allegation made by the Applicant, it is worth pointing out, again, that no wrongdoing is alleged in the present proceedings against the Notice Party and no relief of any kind is sought against the Notice Party. Nor can this court make any adverse finding against the Notice Party. That being said, Mr. Kenny explains the difference between 14.9 and 16.5 Ha clearly and cogently, in his 4 April 2017 affidavit, as follows: -

"A proposal for the inclusion of a future 'Large Town park' was referred to at p. 50 of the draft Sallins LAP. The relevant Land Use Zoning Objective Map Ref. 1 showed

the location of the proposed town park and indicated an area of 14.9 Ha, within a larger area of lands zoned 'F' Open Space and Amenity. The area identified for the future town park was not the only area of land proposed to be zoned as Open Space and Amenity under the draft Sallins LAP and there were further lands so identified, located west of the town as appears from the said map. These additional lands comprised some 26.5 Ha which, together with the 14.9 Ha for the town park, came to a total of 41.4 Ha of land to be zoned Open Space and Amenity".

138. According to Mr. Kenny's averments, there was 24.6 Ha of land zoned Open Space and Amenity in the 2009 Sallins LAP, whereas the area to be zoned Open Space and Amenity in the successor LAP was 41.4 Ha, resulting in an additional 16.6 Ha of lands zoned for Open Space and Amenity. In para. 16 of his 4 April 2017 affidavit Mr. Kenny avers that the total area was actually 16.6 Ha, rather than 16.5 Ha. Nothing material turns on the difference between 16.6 and 16.5 Ha, insofar as this issues before this court are concerned. Furthermore, I am entirely satisfied that the evidence does not support the Applicant's assertion that the Notice Party misrepresented, deliberately or otherwise, the size of the lands zoned Open Space & Amenity (F) from 14.9 to 16.5 Ha. I am satisfied that the averments by Mr. Kenny in his 4 April 2017 affidavit accurately explain how each figure was calculated and I am satisfied that a minimum of 16.5 Ha (in fact 16.6) was zoned for Open Space and Amenity, over and above the quantum of land so zoned in the 2009 LAP. In light of the foregoing, the reference in para. 5.1.5 of the Chief Executive's report to "16.5 Ha of new 'Open Space & Amenity' zoned lands" did not constitute inaccurate information. Insofar as the Applicant suggests that such information constituted an error which taints the Minister's decision to issue the 8 August 2016 Direction, the evidence does not support any such claim.

26 May 2006 report by the Respondent's planning adviser

139. Tab W of exhibit SM1 to Mr. McCarthy's affidavit comprises a 26 May 2016 report prepared by Mr. Stewart Logan, planning adviser of the Respondent. It set out information under the headings Draft Ministerial Direction, Wording of the Draft Direction, Report of the Chief Executive of Kildare County Council on the Draft Direction, Submissions, Persons who made Submissions, Elected Members of the Planning Authority who made Submissions, Recommendation of the Chief Executive's Report, Consideration of the Chief Executive's Report and Recommendation. Section 4.0 on internal p. 5 of the report states the following: -

"4.0 RECOMMENDATION

Following consideration of the Chief Executive's report on the Draft Ministerial Direction, the Department remains of the position that the provisions of the Plan concerning Material Alteration no. 20 would result in additional residential zoning significantly above the Core Strategy allocation of the Kildare County Development Plan 2011 - 17. The LAP is therefore not in compliance with s. 19(2) of the Planning & Development Acts 2000 - 15 as it is not consistent with the Core Strategy of the Kildare County Development Plan 2011 - 17. The peripheral location of the

residential lands relative to more centrally positions undeveloped zonings also fails to accord with guidelines to planning authorities issued by the Minister under s. 28 of the Planning & Development Act, 2000, specifically the Development Plan Guidelines (2007).

It is recommended that the draft Ministerial Direction should issue as a formal ministerial direction to Kildare County Council in accordance with the recommendation of the Chief Executive of Kildare County Council (s. 5.2 of the Chief Executive's Report on the Draft Ministerial Direction)".

Independent Inspector's Report dated 24 June 2016

140. It is not in dispute that, on or about 3 June 2016, the Minister appointed an independent Inspector, Mr. Des Johnson, to carry out a review in accordance with s. 31(13) of the PDA 2000, which provides for same. The Inspector's report was prepared on 24 June 2016 and was forwarded to the Chief Executive of the Notice Party by letter dated 29 June 2016 from Mr. Niall Cussen, principal adviser, planning section. The 24 June 2016 Inspector's report was entitled: - "Report – Section 31 Independent Review – Sallins Local Area Plan 2016 – 2023". Tab G of Exhibit SM1 of Mr. McCarthy's affidavit sworn 3 November 2016 comprises the Inspector's report. Having set out the background, in s.1, s. 2 of the report sets out the terms of reference as follows: -

- "1. Review of the draft Direction issued taking account of the Minister's view that further investigation is required into the contents of the draft Direction issued taking account of the Minister's view that further investigation is required into the contents of the draft Direction in order to ascertain if a material amendment to that draft Direction is required, in particular regarding future housing development and the supporting local and community facilities;
2. Consultation with the Chief Executive and Elected Members of Kildare County Council;
3. Consultation, if deemed necessary, with the Regional Assembly and persons who made submissions;
4. Submission of a report to the Minister, containing recommendations, by 24th June 2016".

141. Section 3 of the Inspector's report set out information in relation to the location and description of the lands in question. Section 4 dealt with the draft direction and s. 5 dealt with the Chief Executive's report. Section 6 referred to submissions to the independent inspector and summarised the submissions received from the Notice Party, from named members of Naas Municipal District, and from Sallins Community Council. Section 7 of the Inspector's report, entitled "National/Regional Policy", contained inter alia the following: -

"7.1 Development Plans – Guidelines for Planning Authorities, 2007

Development Plan zonings should be based on a needs driven assessment of future development requirements. Zoning that is not responsive to or justified by

reasonable needs, or substantially exceeds such needs, is not consistent with proper planning and sustainable development.

Consistency between plans and strategies at different levels is essential.

Planning legislation requires that a local area plan shall be consistent with the objectives of a development plan. The development plan is the “parent” document within which the zoning and other objectives of the local area plan must be formulated. For example, residential zonings should have regard to the council’s housing strategy.

Chapter 4 refers to development plan objectives and states: -

- A development plan should ensure that enough land will be available to meet anticipated development requirements and will be developed in a sequential and coordinated manner. This will avoid a situation where housing estates are built beyond the outer edges of existing built up areas while intervening lands lie undeveloped, resulting in deficiencies in terms of footpaths, lighting, drainage or adequate roads infrastructure.
- In the interests of sustainable development, excessive areas of land around small towns should not be zoned for development.
- S. 4.10 – to support public confidence in the planning system and the development plan, decisions to zone land must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan.
- S.4.11 – planning authorities must ensure that sufficient and suitable land is zoned for residential, or for a mixture of residential and other uses, to meet the requirements of the housing strategy. Zoning should meet the residential need for a nine-year period.
- S. 4.12 – When considering the suitability of specific lands for development, within the zoning process, Members are restricted to considering the proper planning and sustainable development of the area to which the development plan relates, statutory obligations and Government policy.

A logical sequential approach should be taken to the zoning of land for development. ‘leapfrogging’ to more remote areas should be avoided. There should be a strong emphasis on infill. Areas to be zoned should be contiguous to existing zoned development lands. Any exceptions to these principles should be clearly justified”.

142. Internal p. 19 of the independent Inspector’s report contains inter alia the following in s. 8.1 (which refers to the Kildare County Development Plan 2011 – 2017) under the subheading “Settlement Hierarchy”: -

“In terms of development capacity, eight small towns, including Sallins, have been significantly overzoned. The 2017 population target for Sallins is 4,450. An

assessment of the current surplus for targeted unit growth for Sallins indicates a surplus of 572. . .”

Reference by the Inspector to the residential zoning of the Applicant’s lands in the 2009 LAP

143. Internal p. 20 of the Inspector’s report contains inter alia the following: -

“8.3 Sallins LAP 2009

The subject lands are zoned F (1) – Open Space & Amenity, and B – Residential. A small block of land to the north of the F (1) zoning is zoned E – Community and Educational.

The total envisaged population for Sallins in 2015 is 7,360.

The Plan proposes 12.1 ha (30 acres) of additional “Residential” zoned land on the Clane Road as part of an extension of the town boundary. This is to incorporate residential, community and educational, amenity and agricultural uses.

8.4 Draft Sallins LAP 2015 – 2021

Within a reduced LAP boundary, the portion of the lands roughly equating to the lands zoned for residential in the 2009 LAP are excluded, and the remainder of these lands are zoned H – Industry and Warehousing . . .” (emphasis added)

144. It is clear from the foregoing contents of the Inspector’s report that the Respondent Minister was made aware by the Inspector of the fact that the Applicant’s lands were zoned under the 2009 Sallins LAP. It was also made clear that it was proposed that lands, which were zoned residential in 2009, would not be so zoned under the successor LAP and would not come within the Sallins LAP boundary. The foregoing is factually correct and illustrates that the evidence wholly undermines the Applicant’s claim that the Minister was misinformed and acted under a fundamental error with regard to the prior zoning status of the Applicant’s lands insofar as the 2009 LAP was concerned. Section. 8.5 of the Inspector’s report goes on to set out certain facts in relation to the Sallins LAP as adopted on 9 March 2016 as follows: -

“8.5 Sallins LAP 2016 – 2022

The LAP was adopted on 9th March 2016. . . . the subject lands are zoned F – Open Space and Amenity (14.5 ha), C 9 – New Residential (12 ha) and E – Community and Educational (1.2 ha). . . .

...The quantum of residentially zoned lands in the 2009 LAP exceeds the target set in the Kildare CDP 2011 – 2017 and lands not required for the housing target are to be appropriately rezoned. The county settlement strategy figures stipulate that a maximum of 240 additional units (excluding those permitted but not built), are required over the lifetime of the Plan. This allows for overzoning of one – third to one – half as advocated in Ministerial Development Plan Guidelines.

It is LAP policy (HP 1) to facilitate residential development in accordance with the County Settlement Strategy and Core Strategy set out in the Kildare CDP 2011 – 2017 or any future plans. This zoning provides for the phasing of Residential lands

(Phase 1 includes Town Centre and adjoining commercial and residential zoned lands and three pockets of residentially zoned lands close to the train station)“.

The Independent Inspector’s view that the draft Direction was correct

145. Section 9 of the 24 June 2016 report comprises the independent Inspector’s assessment and sets out information under the subheadings Background, Reasoning behind the Draft Direction, Kildare County Council Submissions, Submissions supporting MA 20, Submission opposed to MA 20, Legislative Background, National, Regional and local Policy, MA 20 Residential Zoning, MA 20 Open Space and Amenity Zoning and MA 20 Community & Educational Zoning, followed by the Inspector’s recommendation. The following are extracts from s. 9.8 of the Inspector’s report under the heading MA 20 Residential Zoning: -

“I consider the draft Direction and the reasons given to be correct in respect of this proposed zoning. Based on the information presented the residential need for the zoning of these lands is not demonstrated and quantified, contrary to provisions in the Development Plan Guidelines and LAP Guidelines. Furthermore, the settlement strategy in the statutory Kildare CDP 2011 – 2017, which is informed by the regional planning guidelines, indicates that Sallins has been significantly overzoned. The draft Kildare CDP 2017 – 2023 (while only at consultation stage and, as such, open to change before adoption) indicates a capacity surplus of units for Sallins. It also designates Sallins as a Small Town.

The proposed zoning appears to be inconsistent with other statements in the Sallins LAP 2016 – 2022. For example, s.5.0(6) states that the quantum of residentially zoned lands in the Sallins LAP 2009 exceeds the target set in the Core Strategy of the Kildare CDP 2011 – 2017 *‘sites with a valid planning permission will remain zoned in this plan while a small quantum of additional lands for residential purposes will be provided to cater for future housing needs. Lands which are not required for the housing target will be appropriately rezoned’*. There is no information before me to indicate that the subject lands have a valid planning permission.

It is national and regional policy that future housing expansion should follow a sequential approach with a strong emphasis on infill and consolidation of existing town centres. This is followed through in the current Kildare CDP settlement strategy, which requires that all towns be developed in a sequential manner with lands closest to the core and public transport routes given preference. The proposed zoning, because of its peripheral location, cannot be regarded as providing for infill or consolidation and, relative to the other residential zonings in the LAP, is further from the rail station. The lands adjoin existing residential development but, because of the layout of that development, it is likely that the proposed residential lands would have to be accessed from the R407 and through the proposed Amenity lands. Accessibility to the subject lands would be increased by the proposed and approved town by – pass. It will also take existing heavy

traffic out of the town and make the consolidation of the town centre more attractive.

Argument is made that Naas and Sallins should be considered en bloc for planning purposes, and that, in this context, increased residential development could be justified. I can see no policy support for such a suggestion and note that the adopted LAP seeks to ensure that Sallins remains an independent town with its own niche identity and to avoid coalescence with Naas”

146. In short, a key recommendation of the independent Inspector was that the Applicant’s 30 acres should *not* be zoned for new residential development. This is of considerable significance in the present case in circumstances where the Inspector’s report was part of the material considered by the Respondent minister prior to the latter’s decision to issue the Direction on 8 August 2016 in similar terms to the draft. The Inspector also recommended the retention, as per Material Alteration 20, of zoning F: Open Space & Amenity. The Inspector’s view was that the retention of the “F Zoning” on lands which, pursuant to the draft Direction would revert to the zoning indicated on the Draft LAP namely “H – Industry and warehousing, would not necessarily conflict with the achievement of other zoning objectives including the creation of a town park to the south west of the town centre.

11 July 2016 submission by the Notice Party

147. On 13 July 2016 the Respondent received a submission from the Notice Party in the form of a 4 – page letter to the Respondent Minister from Mr. Michael Kenny of the Notice Party. This set out information under the headings: -

1. Inspector’s Recommendations,
2. Response,
 - 2.1 Omission of MA 20 zoning “C: New Residential”,
 - 2.2 Omission of MA 20 zoning “E: Community & Educational”,
 - 2.3 Retention of MA 20 zoning “F: Open Space & Amenity”,
 - 2.4 LAP boundary, and
- 3 Conclusion.

Section 2.1 on internal p. 2 stated inter alia the following: -

“2.1 Omission of MA 20 zoning “C: New Residential”.

The recommendation of the Inspector to omit the zoning “C: New Residential” is welcomed. As stated previously in the Chief Executive’s Report, pursuant to notice of intent to issue a Ministerial Direction (May 2016):

- Sallins is not listed as a higher order settlement in the Regional Planning Guidelines (RPGs) for the greater Dublin area. It is designated a Small Town in the Kildare

County Development Plan (CDP) 2011 – 2017 and its role is to develop as a key local centre.

- The Sallins Local Area Plan is informed by the RPG's and the Core Strategy of the CDP. The LAP indicates a housing unit target of 240 units for the plan period (2016 – 2022). The additional residential zoning proposed under MA 20 alone could potentially yield a further 365 + housing units for Sallins, which would be inconsistent with the Core Strategy of the Kildare CDP 2011 2017 and the Draft Kildare CDP 2017 – 2023 (published May 2016).
- The addition of the 12.1 Ha of residential land at the north – eastern periphery of Sallins, remote from the town centre in an isolated area to the rear of a large tract of proposed open space, would not result in the development of the town in a sequential manner, where there is more appropriately located land closer to the town centre and its services. This would be contrary to the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas DELCG (2009) and the accompanying Urban Design Manual (UDM), and to proper planning and sustainable development.

The report of the Inspector supports the above position of the Chief Executive on this matter”.

148. As can be seen from the foregoing, the Notice Party was also supportive of the Inspector's recommendation to omit the zoning "E: Community & Educational" as proposed in MA 20 but, for reasons set out on pp. 3 and 4 of the submission, the Notice Party disagreed with the recommendation of the Inspector to retain the Open Space and Amenity zoning element of Material Alteration 20. The Notice Party's submission concluded as follows: -

“3. Conclusion

Having considered the Inspector's report and having regard to the above, the Chief Executive remains firmly of the opinion that the lands proposed for rezoning under MA 20 should revert fully back to the draft Sallins LAP, as per the Minister's draft Direction”.

Thus, it is a matter of fact that part of the material before the Respondent in the context of his 8 August 2016 Direction was the foregoing submission dated 13 July 2016 which, for clearly stated reasons, expressed the view that the lands comprising Material Alteration 20 (being those owned by the Applicant) should not be zoned as per MA 20 and, instead, that their zoning should revert to that proposed in the draft LAP.

28th July, 2016 Report by Stewart Logan

149. An internal report was prepared, dated 28th July, 2016, by Mr. Stewart Logan, planning adviser of the Respondent. It is entitled "Draft Direction Under Section 31 of the Planning and Development Act, 2000 in relation to the Sallins Local Area Plan, 2016-2022". It is expressed to be a report following receipt by the Respondent of the Inspector's report and receipt of submissions from parties in response to the Inspector's report. I am entitled to

conclude, as a matter of fact, that the foregoing were received by the Respondent and that this 28 July 2016 report was also part of the material available to the Respondent Minister before the latter issued the 8 August 2016. The report comprises an eight page document which sets out information under the headings: Appointment of Inspector, Inspector's Report, Residential Zoning – objective "C", Open space & amenity zoning – objective "F", Community & educational zoning – Objective "E", Inspector's recommendation, Submissions received in response to the Inspector's report, Chief executive of Kildare County Council, Elected members of Kildare County Council, Regional assembly, Persons who made submissions during the public consultation on the draft direction, Assessment and recommendation, Residential zoning, Open space & amenity zoning, Community & educational zoning and Recommendation. Internal pages 5 and 6 of the report contain the following under the heading "Assessment and Recommendation":

- "(i) Residential Zoning – The Inspector concludes that the need for the residential zoning is not demonstrated or quantified and the zoning is contrary of the core strategy and settlement strategy of the Kildare County Development Plan and to s. 28 Ministerial Planning Guidelines. This zoning should be deleted as provided for in the draft direction.

This conclusion is consistent with the draft direction issued on 5th April, 2016 and the inspector recommends this aspect of the Draft Direction is confirmed.

The additional residential zoning (proposed in material alteration 20 to the LAP) is contrary to the core strategy of the Kildare County Development Plan, 20011-17 which allocates a housing unit target of 240 units for the 2016-22 period (restated in Table 3 of the LAP). The additional residential zoning proposed could result in a further 350+ housing units for Sallins above that already provided for in the originally drafted LAP. Section 3.4.3 of the Kildare CDP 2011-17 states that the growth of Sallins 'will be controlled to limit pressure on services, the environment and unsustainable commuting patterns' and the proposal is in conflict with the planned and sustainable housing growth of Sallins.

The strategy of the Sallins LAP is to consolidate the settlement of Sallins through developing the centrally located development sites within the town. The proposed residential zoning to the north-east of the town to the rear of existing established development is at odds with this strategy and with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under section 28. Section 4.10 (PG.41) of the Guidelines state that decisions to zone land '*must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan*'. The additional residential zoning is not justified on the basis of housing need, policy or existing supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.

Importantly, it would be contrary to the sequential approach to the zoning of lands whereby such zoning should 'extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. 'leapfrogging' to more remote areas should be avoided)' (Section 4.19 of the Development Plans Guidelines).

The Sallins LAP, as adopted inclusive of material alteration 20, is not in compliance with s. 19 (2) of the Planning & Development Acts, 2000-15 which requires that 'a local area plan shall be consistent with the objectives of the Development Plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan'. The Ministerial Direction is required to delete the excessive residential zoning of the LAP and ensure compliance with the Planning & Development Acts, 2000-15 and statutory ministerial guidelines.

It should be noted that C.136 hectares are zoned for new housing development in the Naas Town Development Plan, 2011-17 adjoining to the south of Sallins. This existing zoned lands supply supports the assessment that there is no shortage of available residential lands in the Naas/Sallins area and that the further additional lands proposed are not justified in terms of need."

150. Page 6 of the 28th July, 2016 report dealt with the inspector's recommendation to retain the zoning "F": open space & amenity, as per material alteration 20 to the Sallins LAP which the draft Directions identified for deletion. Internal p. 7 contained *inter alia* the following:

"It is considered that the open space zoning in the original LAP are the most appropriately positioned lands (adjoining the Grand Canal and the town centre) and are substantial in size at 16.5 hectares. This location is consistent with the stated strategy of the LAP to develop the canal environs as a recreation and heritage amenity joining to the River Liffey that is central and accessible to the town. The provision of a second substantial open space zoning is not warranted – in particular where such an additional open space zoning is less appropriately located and would remove the only industry/employment zoned lands from the LAP."

151. Page 8 of the report set out the "Recommendation" and began in the following terms:

"Recommendation

It is considered that the draft direction should be confirmed by the Minister as originally published on 5th April, 2016.

The recommendation of the inspector appointed concurs with the draft direction in deleting the excessive residential zoning proposed. Such an additional zoning is not in compliance with s. 19 (2) of the Planning & Development Acts, 2000-15 and is not in compliance with Development Plans Guidelines (2007) issued by the Minister under s. 28 of the Planning & Development Acts, 2000-15.

Strategically, there are a further 10+ local area plans scheduled for preparation in the Kildare County Council area. There is a significant risk that a pattern would emerge whereby such excessive residential zoning occurs that is not in compliance with the agreed Core Strategy of the Kildare CDP. In aggregation, such piecemeal and incremental zonings would significantly undermine the plan-led system established which provides for the planned delivery of required new housing in tandem with the supporting education, social and other public infrastructure needed.

The Draft Direction provides for the retention of H: Industry & Warehousing Zoned Lands in Sallins which is considered to be necessary for the balanced growth of town the town (sic) and facilitation of employment/enterprise opportunities. It is not considered appropriate to attain an additional open space/amenity zoning, as suggested by the Inspector, as these subject lands are substandard, would remove the H: industry & warehousing considered necessary and would conflict with the LAP strategy to develop open space/amenity lands continuous to the Grand Canal and town centre.

It recommended that the Minister uses his powers under s.31 (16) (a) of the Act to issue the direction as per the draft direction published on 5th April, 2016 without amendment."

3 August 2016 report by Mr. Eoin Bennis

152. A 3 August 2016 report is entitled "Proposed Ministerial Direction Regarding the Adopted Sallins Local Area Plan 2016-2022" and was authored by Mr. Eoin Bennis, of the Respondent's forward planning section. The top of the first page of this seven-page report names the following:

- "1. Assistant Principal – Ruth Murray
2. Principal Adviser – Niall Cussen
3. Assistant Secretary – David Walsh
4. Rúnaí aire
5. Rúnaí aire stáit (for information)
6. Secretary General (for information)"

The top of the document contains, inter alia, a handwritten note which reads as follows:

"Minister, following extensive engagement with local stakeholders & independent inspector's report, it's recommended to proceed with Direction as originally proposed. Separate letter also enclosed to address local concerns around availability of Local/Community lands for recreation – being addressed by Kildare CC. Available to discuss as needed. Dave Walsh 3/8/16".

Another handwritten note at the top of the said document reads "Seen by Minister, Direction approved". I am entitled to conclude on the evidence that, as a matter of fact, this 3 August 2016 report, with appendices, was also part of the material which the

Respondent considered prior to issuing the 8 August 2016 Direction which the Applicant seeks to impugn. The report itself sets out information under the headings: Summary of Decision, Background, Inspector's Recommendation, Consultation, Chief Executive, Elected Members of Kildare County Council, Public Submissions, Planning Section's Analysis and Recommendation, Decision Sought and Next Steps. The fourth and fifth pages of the document contain, *inter alia*, the following under the heading "Planning Section's Analysis and Recommendation":

"The section's assessment of the inspectors (sic) on these zoning issues and the submissions received as part of the public consultation concludes, *inter alia*, that:

1. The need for the residential zoning is not demonstrated or quantified and the zoning is contrary of the core strategy and settlement strategy of the Kildare County Development Plan and to s.28 Ministerial Planning Guidelines. This zoning should be deleted, as recommended by the inspector, as provided for in the draft direction ...

...Accordingly, it is recommended that the Minister use his powers under s.31 (16) of the Act to issue a direction, as originally published on 5th April, 2016. More detailed analysis of the Inspector's report is contained in the planning adviser's report which is attached at Appendix 4."

153. Appendix 4 comprises the 28th July, 2016 report by Mr. Stewart Logan to which I have referred above. The sixth page of the 3 August 2016 report comprised a section entitled "Next Steps", which began as follows:

"It should be noted that, as provided for under s.31 (16) of the Planning & Development Act, 2000 (as amended), the Minister extended the period for making his decision on the draft direction to Tuesday 9th August. The Minister having now considered the Inspector's report and submission received shall decide for stated reasons:

- a) To issue the direction as per the draft direction which issued on 5th April, 2016; or
- b) Not to issue the direction; or
- c) To issue the direction, which has been amended by the Minister to take account of any of the matters referred to in the recommendations contained in the report of the inspector or any submissions by persons on the inspector's report.

In light of the above the Minister should make a decision on the draft direction and no later than Monday 8th August to ensure that the letter(s) arrive with the planning authority by the statutory deadline for receipt or of Tuesday 9th August, 2016 ..."

8 August 2016 – The Direction issued by the Respondent which the Applicant challenges

154. It is not in dispute that on 8 August 2016 the Respondent Minister issued a Direction to the Notice Party pursuant to s. 31 of the PDA 2000. Tab H of exhibit SM1 to the affidavit sworn by Mr. McCarthy on 3 November, 2016 comprises the Direction issued by the Minister. Minister Coveney's letter dated 8 August, 2016 was addressed to Mr. Peter Carey, Chief Executive of the Notice Party. Given that the Respondent's direction is challenged in the present proceedings, it is appropriate to set out, in full, the contents of (a) the Respondent's letter dated 08 August 2016, (b) the Direction pursuant to s. 31 of the Planning and Development Act, 2000 and (c) the accompanying statement of reasons, which I now do as follows.

The Respondent's 08 August letter

155. The 8 August 2016 letter enclosing the Direction which is challenged in the present proceedings was addressed to the Chief Executive of the Notice Party and stated the following:

"Section 31 of the Planning and Development Act 2000, as amended By the Planning and Development (Amended) Act 2010 Decision to issue a Direction relating the Sallins Local Area Plan 2016-2022

Dear Chief Executive,

I am writing to inform you of the following in relation to the Section 31 Draft Direction issued to Kildare County Council in April 2016, and the subsequent appointment of Mr. Des Johnson as an independent inspector, as provided for under Section 31(11) of the Planning and Development Act 2000-2014, to review the draft Direction and the Managers report. As you are aware, the basis for issuing the draft Ministerial Direction is that the proposed MA 20 (in particular the residential element) is inconsistent with national Government policy as set out in the Development Plan Guidelines, 2007 and is inconsistent with the requirements of Section 19(2) of the Planning and Development Acts 2000-2015, as it is not in line with the Core Strategy of the Kildare CDP 2011-2017.

In his Independent Review, the Inspector notes 'the development capacity in eight small towns, including Sallins, have been significantly over zoned'. The Inspector is of the opinion that based on the information presented the residential need for the zoning of these lands is not demonstrated and quantified, contrary to provisions in the Development Plan Guidelines and Local Area Plan Guidelines. Furthermore, the settlement strategy in the statutory Kildare CDP 2011-2017, which is informed by the Regional Planning Guidelines, indicates that Sallins has been significantly over zoned.

You will also be aware that the acceleration of delivery of additional housing to meet rising demand is at the heart of the Government's Action Plan for Housing and Homelessness Rebuilding Ireland - which I launched on 19 July. A corollary of the need for new housing is the need to ensure that additional supply is properly planned for. In that context, as Minister for Housing, Planning and Local

Government, have a responsibility to ensure the excessive zoning that occurred in the past in some parts of the country is not repeated. In this regard, and as you will be aware, the Planning and Development Act 2000, as amended, has strengthened regional co-ordination and the alignment of planning policies from national to local level, with the integration of core strategies and I have to ensure that local authorities continue to engage with this legislation and recognise the need for a plan-led approach for all proposed development. The requirement to include evidence-based core strategies in development plans, which the local area plans feed into, is essential in rationalising the excessive zoning in some parts of the country, and moving to a position where all zoning is based on a quantifiable need that is community based rather than developer-led. Consistency between LAPS and their parent Development Plan, and in particular, the core strategy, is also essential.

I have now considered the report and recommendations prepared by the independent inspector. I have also considered the written submissions and observations received on foot of the public consultation on the inspector's report. Having considered the said report, recommendation, the submission received and the obligation on me to ensure that the forward planning process at local level is underpinned by proper planning and sustainable development and provides for the consistent application of regional and national planning considerations, I have decided that no material amendment to the draft direction of April 2016 is required and to issue the direction as per the notice of intent which issued on 5th April 2016.

Accordingly, Kildare County Council should TAKE NOTICE that on the 8th day of August, 2016 I have issued a Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended).

A copy of this Direction is attached to this letter.

STEPS TO BE TAKEN

In light of the foregoing the Planning Authority is required, pursuant to Section 31(2) of the Planning and Development Act 2000 (as amended) to comply with this Direction.

The Sallins Local Area Plan 2016-2022 must therefore be altered as indicated in the attached Direction, and the Planning Authority should ensure that copies of the Development Plan as altered are available for inspection at its offices and on its website.

The Planning Authority should also publish notice of the making of the Direction and alteration to the Plan, and post a copy of such notice on its website.

My officials remain available to assist you, as necessary, in complying with the foregoing process.

Community Amenity

Finally, I am concerned about the reported deficiency in local community and recreation facilities relative to the needs of the town, as borne out by the significant number of submissions on the draft Direction. In this regard I have issued a separate letter articulating my Department's views that the matter of local community facilities in Sallins be dealt with expeditiously by Kildare County Council.

Yours sincerely,

Simon Coveney T.D.,

Minister for Housing, Planning and Local Government"

The Direction

The Respondent's 08 August letter enclosed a Direction in the following terms:

"DIRECTION IN THE MATTER OF SECTION 31 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED BY S. 21 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010) SALLINS LOCAL AREA PLAN 2016 – 2022 DIRECTION 2016.

"Local Area Plan" means the Sallins Local Area Plan 2016 – 2022.

"The Planning Authority" means Kildare County Council.

WHEREAS the Minister for Housing, Planning, Community and Government is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that: -

- (iii) Kildare County Council in making the Sallins Local Area Plan 2016 – 2022, has ignored or has not taken sufficient account of the submissions made by the Minister for the Environment, Community and Local Government in January 2016,

And

- (iv) The Sallins Local Area Plan 2016 – 2022 is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act 2000 (as Amended).

NOW THEREFORE, in exercise of the powers conferred on him by s. 31 of the Planning and Development Act 2000 (as Amended), the Minister for Housing, Planning, Community and Local Government hereby directs as follows:

- (iii) This Direction may be cited as the Planning and Development (Sallins Local Area Plan 2016 – 2022) Direction 2016.
- (iv) The County Council Kildare County is hereby directed to take the following steps with regard to the Sallins Local Area Plan 2016 – 2022 ("the Local Area Plan").
 - (a) The map entitled Sallins LAP 2016 – 2022 Map 1 "Land use zoning objective map" March 2016 which sets out the zoning objectives for the

town of Sallins in the Sallins Local Area Plan 2016 – 2022 is to be amended by removing the zoning objectives: -

- (i) For lands located east of the Clane Road (R407) and stretching to the rear of existing residential development at the north eastern periphery of Sallins with the zonings – objective C: New Residential, objective E: Community & Educational and objective F: Open Space & Amenity (Material Alteration No. 20).

For ease of reference a copy of the Sallins LAP 2016 – 2022 Map 1 “*Land use zoning objective map*” (March 2016) indicating the subject lands (outlined in a dashed red line) is attached as Appendix 1 to the direction. The effect of this amendment will be that the lands identified in (i) above revert to their status as per the Draft Sallins Local Area Plan 2016 - 2022 (June 2015). For ease of reference a copy of the Draft Sallins LAP 2016 – 2022 Map 1 “*Land use zoning objective map*” (June 2015) is attached as Appendix 2 to the direction.”

Statement of Reasons

The foregoing Direction was followed by a “Statement of Reasons” in the following terms:

“STATEMENT OF REASONS

- 1) On 8th January 2016, a written submission on the Proposed Material Alterations to the Draft Sallins Local Area Plan was made to Kildare County Council on behalf of the Minister for the Environment, Community and Local Government. This submission advised Kildare County Council that Proposed Material Alteration No. 20 was not in compliance the (sic) requirements of s. 28 Ministerial Guidelines (specifically the Development Plans Guidelines, 2007) and its statutory responsibilities.

Kildare County Council was advised that this specific Proposed Material Alterations to the Draft Sallins Local Area Plan 2016 – 2022 should not be accepted by the planning authority in order to ensure compliance with the Minister’s Guidelines.

Despite this, on 9th March, the Elected Members voted by resolution to adopt Proposed Material Alteration no. 20 as previously placed on public display.

Zonings east of the Clane Road (R407) (Material Alteration No. 20)

This Material Alteration (No. 20) relates to lands to the east of the Clane Road (R407) and stretching to the rear of existing residential development at the northeastern periphery of Sallins. The Material Alteration seeks to re-zone a significant land parcel to three new zonings consisting of ‘E’ – Community & Educational (1.2 Ha), ‘F’ – Open Space & Amenity (14.5 Ha) and ‘C’ – New Residential (12 Ha). The western portion (proposed Open Space) of the Material Alteration site includes lands originally proposed as ‘H’ – *Industry & Warehousing* in the draft LAP that were within the identified LAP boundary.

Section 3.4.3 of the Kildare CDP 2011 – 17 states that the growth of Sallins: - *'will be controlled to limit pressure on services, the environment and unsustainable commuting patterns'*. The Kildare CDP 2011 – 2017 details a population target of 4,550 for 2017 (Table 3.3) and a housing target of 527 for the 2006 – 2017 period which equates to 1.9% of the county allocated growth (27,982 units).

The Sallins LAP indicates a housing unit target of 240 units for the 2016 – 22 period (Table 3 of the LAP). The additional residential zoning proposed could potentially yield a further 365+ housing units for Sallins generating a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed residential zoning is therefore not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s. 19(2) of the Planning & Development Acts 2000 – 15 which requires that *'a local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan'*.

The peripheral and greenfield nature of the site is also at odds with planning guidance on the zoning of lands provided in the Development Plans Guidelines (2007) issued by the Minister under s. 28. Specifically, decisions to zone land *"must be made in an open and transparent manner, must be clearly justified on the basis of established need and must support the aims and strategy of the plan"*. (s. 4.10, pg. 41 of the Guidelines). Material Alteration No. 20 is contrary to the main aim of the LAP to consolidate Sallins through developing the centrally located sites within the town. It is not justified on the basis of housing need, policy, or existing supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.

In particular, a residential zoning to the north east of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands whereby such zoning should *"extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. 'leapfrogging' to more remote areas should be avoided)"* (section. 4.19 of the Development Plans Guidelines). The proposed zoning is not justified in relation to specified zoning criteria and would be contrary to the Ministerial Guidelines.

In light of the above, the Minister is of the opinion that the planning authority has ignored, or has not taken sufficient account of the said written submission, in that the Planning Authority proceeded to adopt a policy objective which would be inconsistent with national Government policy (the Development Plans Guidelines, 2007) and the requirements of s. 19 (2) of the Planning and Development Acts 2000 – 15 and it is not consistent with the Core Strategy of the Kildare County Development Plan 2011 – 17.

- (2) The decision by the members to alter the policy in regard to the zoning objectives as outlined in this direction do not provide for proper planning and sustainable development and therefore the Sallins Local Area Plan 2016 – 2022 is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act 2000 (as Amended).

GIVEN under my hand,

Simon Coveney

Minister for Housing, Planning and Coordination of Construction, 2020

This 8th day of August 2016”.

156. The maps referred to in the Direction and Statement of Reasons accompanied same, namely, Land Use Zoning Objective Maps comprising Appendices 1 and 2.

Versions of the Sallins LAP “Table 5” in sequence

157. It will be recalled that the draft LAP for Sallins, which was published in June 2015 contained, inter alia, a Table (on internal page 14 of that document) which was entitled “Table 5 – Quantum of New Residential Land (Zoned C) within the Plan”. This can be found in exhibit “NC5” to the 20 February 2017 Affidavit which was sworn by Mr Niall Cussen, principal planning advisor of the Respondent. In the manner explained earlier in this judgment, it is clear that there were several versions of “Table 5” which were produced as the Sallins LAP for 2016 – 22 progressed. The first of five was in the draft LAP as it originally appeared in June 2015 and the fifth was produced in response to the Respondent’s August 2016 Direction. At this juncture, it is appropriate to deal with them for the sake of clarity and completeness.
158. In his affidavit sworn 4 April 2017, Mr. Michael Kenny, senior planner employed by the Notice Party, explains various changes which Table 5 underwent between Version 1 (published on 26 June 2015) and Version 5 (produced following the Respondent’s Direction dated 8 August 2016). The five versions of Table 5 are exhibited at Tab 6 in the booklet of exhibits referred to in Mr. Kenny’s 4 April 2017 affidavit. Each version of Table 5 specifies, inter alia, a total, in hectares, of land for residential development and a corresponding total, in housing units. It is self-evident that any estimate of housing units in respect of a developable site area depends on the estimated density per hectare to be applied. It is a matter of fact that each version of Table 5 provides an estimated density in terms of the number of units per hectare estimated to be produced by each site. In his 4 April 2017 affidavit, Mr. Kenny explains the reasons why density estimates can and do change and I accept that evidence. It is appropriate to point out that no challenge is brought to any “Table 5” or in respect of the contents thereof. The then “Estimate per ha” is specified in respect of the sites listed on each Table 5 as will be seen from the analysis of each, in chronological order. It should also be pointed out that estimates are obviously just that and final housing unit numbers, actually constructed, will be a function of residential development in accordance with a planning permission process. I should also emphasise that there is no evidence that any of the estimates set out in any version of Table 5 were other than *bona fide* estimates, at the time, of the unit potential in respect of each site and, collectively, the total residential housing unit potential of the

then total developable site area. Finally, it should be pointed out that none of those estimates are challenged in the present proceedings and no relief is sought, whatsoever, against the Notice Party. It is also a fact that the Respondent had no role in producing any Table 5. Against that background, it is important to understand what each iteration of Table 5 contained and the context in which each Table 5 was produced. I am satisfied that the factual position can be summarised as follows.

Version 1 of "Table 5"

159. Version 1 of Table 5 appeared in the draft Sallins LAP 2016 – 22, published on 26 June 2015. It set out information under the headings "Site ref", "Site area (ha)", "Units granted/Estimate per ha" and "Unit potential". With regard to site references, there were seven sites listed namely C1, to C7 inclusive. A total site area of 10.6 ha was specified, with a unit potential of 261. This first version of Table 5 did not take into account the fact that other lands in the draft LAP zoned Town Centre ("A" zonings) and Commercial/Residential ("K" zonings) also had potential to accommodate residential development. It will be recalled that the Applicant's lands were not zoned for residential development in the first version of the draft LAP as published on 26 June 2015 which contained this Table 5.

Version 2 of "Table 5"

160. Version 2 comprises the revised Table 5 which was prepared by the chief executive, following considerations of submissions in response to the publication, in June 2015, of the draft LAP. This was the version presented to the meeting of elected representatives which took place on 22 October 2015. It will be recalled that, at the 22 October 2015 meeting, the elected members considered the chief executive's 11 September 2015 report on the submissions made in respect of the draft Sallins LAP and resolved to accept what Mr. Kenny describes in his affidavit as Version 2 of table 5. It is also a fact that Version 2 of Table 5 comprised "Appendix 1" to the chief executive's 11 September 2015 report. In addition to site references C1 to C7 inclusive, this second version of Table 5 includes site references A1, A2 and A3 (reflecting Town Centre) as well as K1 and K2 (Commercial/Residential). The "Site Area Developable (ha)" is specified to be 27.4 ha representing a total "Unit Potential" of 598. As I have explained earlier in this judgment, the elected members accepted Version 2 of Table 5 *before* going on to consider the proposed material alteration to the draft LAP in respect of the Applicant's lands. It is a fact that the members went on to resolve to include the Applicant's lands and these lands are referred to as C9. The decisions taken at the 22 October 2015 are reflected in Version 3 of Table 5.

Version 3 of "Table 5"

161. I am satisfied that, as a matter of fact, Version 3 of Table 5 accurately reflects the total area of land capable of accommodating residential development as per decisions made by the elected members on 22 October 2015. Version 3 of Table 5 identifies, with a "C", those sites having the zoning "New Residential". It lists sites C1 to C9 inclusive. Site C9 refers to the Applicant's lands. The developable site area of the Applicant's lands is said to be 12.15 hectares and, using an estimate of 30 residential units per hectare for that site,

the unit potential of the Applicant's lands (C9) is specified to be 365. Version 3 of Table 5 also refers to site references A1, A2, A3, A4, K1 and K2. It will be recalled that sites with an "A" reflect "Town Centre" zonings, whereas "K" refers to zoning for "Commercial/Residential". Version 3 of Table 5 also includes certain "Notes" opposite the last six entries, being sites zoned A and zoned K. The total developable site area is specified to be 36.55 hectares, representing a total unit potential of 1,190 housing units.

Version 4 of "Table 5"

162. The chief executive prepared a report by reference to Version 3 of Table 5 as published. That report dealt with submissions received and the chief executive's report was considered on 9 March 2016. At the meeting which took place on 9 March 2016, the elected members decided to remove site A4 from Table 5. Site A4 referred to GAA lands and the effect of the foregoing was to decrease the area of land available for development from the 36.44 hectares specified in Version 3 of Table 5, to 33.5 hectares which appears in Version 4 of Table 5. As averred by Mr. Kenny, on behalf of the Notice Party in his 4 April 2017 affidavit, the combined effect of the removal of Site A4 and certain adjustments in respect of densities, resulted in a net decrease of 67 housing units from the figure of 1,190 (which appeared in Version 3) to the total of 1,123 (which appears in Version 4 of Table 5). I am satisfied that, as a matter of fact, it was Version 4 of Table 5 which ultimately formed part of the Sallins LAP 2016 – 22 which the elected members adopted on 9 March 2016. I am also satisfied that, as a matter of fact, Version 4 of Table 5 was the version furnished to the Respondent and to the Respondent's Inspector. This is clear from the averments by Mr. Kenny in para. 23 of his affidavit sworn 4 April 2017 and para. 98 of Mr. Cussen's affidavit sworn 20 February 2017. It is a matter of fact that the KCDP 2011 – 17 specified a housing unit target for Sallins of 527 in respect of the period to 2017. It is a fact that 1,123 housing units, as specified in Table 5 of the Sallins LAP 2016 – 22 adopted by the Notice Party's elected members, is very substantially greater than the target of 527 in the County Development Plan which was in force at the time.

Version 4 of "Table 5"

163. Mr. Kenny also exhibits what he describes as Version 5 of Table 5. I am satisfied that, as a matter of fact, Version 5 reflects the amendments to Table 5 of the Sallins LAP, following the Respondent's Direction dated 8 August 2016. Looking at this final version of table 5, one can see that Site C9, being the Applicant's lands, has been removed. This results in a reduction of the total developable site area from 33.5 hectares to 21.35 hectares, with a consequent reduction in the residential unit potential to a figure of 758. I am satisfied that Version 5 of Table 5 has been incorporated into the Sallins LAP 2016 – 22 as a result of the Minister's Direction and, as Mr. Kenny of the Notice Party avers in para. 24 of his 4 April 2017 affidavit, this is the LAP which has been published. It is appropriate to point out that the Applicant has not challenged the Notice Party's decision-making process as regards the Sallins LAP. Nor is there any challenge brought in relation to the Sallins LAP, as published, and which incorporates Version 5 of Table 5. The sole challenge in the present proceedings is in respect of the Respondent Minister's Direction dated 8 August 2016.

The position of the Notice Party.

164. The manner in which this case was pleaded has certain unusual features and it is necessary to deal with those. It is fair to say that the affidavits which were sworn on behalf of the Applicant contains, *inter alia*, numerous allegations of wrongdoing and/or errors on the part of the Notice Party. Yet, as I observed earlier in this judgment, no relief is sought against the Notice Party. The foregoing merits explanation and, on day four of the trial, counsel for the Notice Party addressed the court in relation to the history of the case which can fairly be summarised as follows. The Applicant in these proceedings sought leave to bring the proceedings on a number of stated grounds, as would be usual. As originally maintained, these proceedings named both the Minister and Kildare County Council as Respondents, the latter being the second named Respondent when the proceedings commenced. The Applicant duly served a statement of grounds on Kildare County Council which contained, *inter alia*, the following paragraph:

"13.14 The Second Named Respondent erred in law in that it purported to make a plan which was different to that resolved to be adopted by the elected members and/or the subject of a Direction issued under s.31 of the Planning and Development Act 2000 (as amended) and the plan as published is ultra vires the second named Respondent."

165. The supplemental affidavit sworn by Mr. McCarthy on 14 November, 2016 contains averments which relate directly to para. 13.14, in that accusations are levelled at Kildare County Council including, *inter alia*, "*deliberate misrepresentation*" of the size of certain lands and a claim that there was a material alteration to the draft Sallins LAP allegedly without notice or consideration by the elected members, which is claimed to have been "*ultra vires and unlawfully inserted in the adopted plan*". The suggestion is made that "*this was done to deliberately influence the Inspector and the Minister*". Further allegations are made of "*misstating*" the quantum of available housing on certain lands and these alleged amendments are claimed by the Applicant to be "*ultra vires and unlawfully inserted in the adopted plan*". At this juncture it is important to emphasise that the evidence in this case does not support any adverse findings whatsoever against the Notice Party but, more importantly, the Applicants in these proceedings are simply not entitled to ask the court to make any finding of wrongdoing on the part of Kildare County Council, for reasons I will proceed to explain.
166. Crucially, para. 13.14 of the statement of grounds which I quoted verbatim above is no longer in the statement of grounds which is before the court. It should also be made clear that, of the sixteen grounds in the statement of grounds as originally served on Kildare County Council, the only paragraph referring to the latter was para. 13.14. It was the contents of para. 13.14 which gave rise to the engagement by the local authority and this can be seen from, *inter alia*, the various affidavits sworn on behalf of Kildare County Council in the proceedings as the pleadings progressed.
167. It is also fair to say that, at various points during days one and two of the trial, counsel for the Applicant referred, in their submissions, to actions and alleged actions on behalf of

Kildare County Council, including as regards the calculation and change of housing density figures and the calculation of the quantum of land to be zoned for open space amenity (F), the foregoing being matters the Respondent had no involvement in whatsoever, as is not in dispute. The suggestion was made on behalf of the Applicant that the foregoing are issues in the case but, as counsel for Kildare County Council submitted, there are no grounds pleaded against Kildare County Council and no action or omission on the part of Kildare County Council is being or can be impugned in the present proceedings. Counsel for Kildare County Council is undoubtedly correct. This is plain when one looks at the "correct" version of the statement of grounds, being the only statement of grounds properly before this court. Two fundamental observations need to be made. Firstly, the wording from what was para. 13.14 in the statement of grounds as originally served on Kildare County Council, is entirely *absent* from the version before me and there is no claim of wrongdoing made against the local authority. Secondly, para. 13.3 of the statement of grounds contains inter alia, the following -

"There was no breach of sections 19,20 or 28 of the Planning and Development Act 2000 and *at all material times* the provisions of the Sallins Local Area Plan *the procedures adopted by the second named Respondent complied with and/or were not in contravention of the sections relied on.*" (emphasis added)

168. The aforesaid wording appeared in the "wrong" version of the statement of grounds, as originally served on Kildare County Council and also appears in the "correct" version of the statement of grounds which is before this Court. Thus, there is no claim of wrongdoing made against what is now the Notice Party. A significant volume of the various affidavits exchanged in the case, as well as two applications for discovery, relate to allegations of wrongdoing on the part of Kildare County Council. This is because it was some three years *after* these proceedings commenced, before Kildare County Council became aware that the Applicant never obtained leave to pursue any grounds against the Council. The circumstances in which this came to the Council's attention are as follows.
169. The case was listed for hearing in June 2019. The Applicant brought a motion against what were then both Respondents, seeking leave to cross-examine various deponents, in particular, Messrs Kenny and Kavanagh, Executive Planner and Senior Executive Officer, respectively, of Kildare County Council. Both had sworn affidavits in the context of discovery. It was during the course of that motion, which was being resisted, that the Council became aware for the first time of the irregularity in relation to the statement of grounds which had been served on it. Mr. Justice Allen determined that it would be inappropriate to proceed with the Applicant's motion to cross-examine until matters were clarified in relation to what leave the Applicant had obtained insofar as pleaded grounds were concerned. The motion was adjourned and the matter subsequently came before Mr. Justice Humphreys who had granted leave, on 12 December 2016, to bring judicial review proceedings. It was during the course of the hearing before Mr. Justice Humphreys that the Applicant sought an extension of time for leave to serve an amended statement of grounds containing para. 13.14 to which I referred above. It is a matter of fact that no leave of the type set out in para. 13.14 had originally been granted and it is a matter of

fact that the court's copy of the statement of grounds did not contain para. 13.14, whereas the copy of the statement of grounds served on Kildare County Council did. Mr. Justice Humphreys refused the Applicant's application for an extension of time within which to file an amended statement of grounds and this is reflected in an order made on 28 May, 2019. The application to cross-examine the Council's deponents came back before Mr. Justice Allen who refused the application in circumstances where there were and are no grounds pleaded against Kildare County Council. This is reflected in an order made on 31 May, 2019.

170. There followed a series of letters exchanged between the parties. The first of these was a 17 June, 2019 letter sent by Messrs Regan McEntee & Partners, solicitors for Kildare County Council. This referred, *inter alia*, to the order made by Mr. Justice Humphreys on 28 May, 2019 and went on to state the following:-

"In this regard Kildare County Council, the second named Respondents seek to be reconstituted as a Notice Party rather than a Respondent and that all pleadings are amended to reflect this. In addition, the County Council believes that the pleadings to date should specifically be reconstituted by the removal of the following:..."

This was followed by a list of pleadings and affidavits containing averments relating to para.13.14. By letter of 18 May, 2019, Messrs Reddy Charlton, solicitors for the Applicant, declined to agree to the amendment of the pleadings sought and stated, *inter alia*: "*Clearly these are factual matters which are relevant to the proceedings and must be maintained. In those circumstances if you want to delete sections of the affidavits sworn in these proceedings you should you bring a Motion grounded on Affidavit seeking that relief...*" An 18 June, 2019 letter from the solicitors for Kildare County Council referred to the fact that Kildare County Council was no longer an appropriate Respondent in the proceedings and went on to say, *inter alia*, that: "*Accordingly it follows that affidavits filed in the proceedings in response to such a claim of purported wrongdoing on behalf of the Council no longer form a relevant part of the proceedings...*"

171. By letter of 19 June, 2019, Messrs. Pearts, solicitors acting for Kildare County Council sought to obtain a copy of the order made by the court on 19 June, 2019, when the matter had come before Mr. Justice Noonan. With regard to the order sought by Messrs. Pearts, their letter stated, *inter alia*, the following:

"(1) The title to the proceedings be amended to provide for Kildare County Council to be a Notice Party rather than a Respondent on the basis that no claim or inference will be made by the parties as to any alleged wrongdoing on the part of the now Notice Party.

(2) That the former Second Named Respondent and now Notice Party's Statement of Opposition be amended to reflect that there is no longer any allegations of wrongdoing on the part of the now Notice Party and to comply with the order of Mr. Justice Humphreys on the 28 May, 2019.

(3) *That liability for the costs to date of the now Notice Party be left over for determination by the trial judge at the conclusion of the hearing of the Action...*"

It appears that the order made by Mr. Justice Noonan was perfected in advance of the Registrar receiving the 19 June, 2019 letter from Messrs. Pearts. The order, as perfected, records that the title of the proceedings be amended such that the second named Respondent be removed as a Respondent and be named as a Notice Party. By letter dated 4 July, 2019, the Chief State Solicitor's Office wrote to Messrs Regan McEntee & Partners Solicitors to confirm that their client (the Respondent herein), accepted that the said Order was made in the context of paras. 1 and 2 of the letter dated 19 June, 2019 which Kildare County Council's solicitors sent to Pearts. The final item of correspondence of relevance to the issue is the 23 July, 2019 letter sent by the Applicant's solicitors to the solicitors for Kildare County Council. It referred to previous correspondence and to discussions between counsel and stated, inter alia: *"We agree that we will make no allegation of wrongdoing against Kildare County Council subject to the Applicant being entitled to rely on all Affidavits filed [including those filed by Kildare County Council] to ground the Applicant's claim in respect of the State Respondent.*

In those circumstances it is not necessary to amend the order."

172. In light of the foregoing, counsel for the now Notice Party submitted to the court that it was the assumption of the Notice Party that no allegation of wrongdoing would be made against Kildare County Council. In light of the history of the matter, as summarised above, that was a fair assumption. I am satisfied that as a matter of fact and as a matter of law there are and can be no allegations of wrongdoing made against the Notice Party in the present proceedings. In fairness to counsel for the Respondent, it was not suggested that the Applicant could resile from the assurances which were, as a matter of fact, given in the 23 July 2019 letter from the Applicant's solicitors. Nor was it suggested by counsel for the Applicant that, as a matter of law, the court could be invited to make any adverse findings against the Notice Party, despite raising "issues" involving alleged actions on the part of the Council with which the Applicant is unhappy. In light of all the foregoing, I am entirely satisfied that the sole issue for determination by this Court is whether or not there was an entitlement on the part of the Respondent Minister to issue his Direction, dated 8 August, 2016, pursuant to s.31 of the Planning and Development Act 2000. This case is not about, nor can it be about, any allegations made against the Notice Party. I would merely add for the sake of clarity that the evidence does not support any finding of any wrongdoing on the part of the Notice Party and entirely supports the plea in respect of the Notice Party contained in para. 13.3 of the Statement of Grounds which I have highlighted above.

Concessions or clarifications by the Applicant.

173. During days one and two of the trial, submissions were made in respect of the entire case as pleaded by the Applicant. All issues were in dispute and there was no concession made on behalf of the Applicant in relation to any of the matters in dispute as per the pleaded case. The reply by counsel for the Respondent, on days two and three, addressed

the entire case, as made by counsel for the Applicant, and on the basis that no concessions were being made. On day four, counsel for the Applicant informed the court that there were two issues which had been the subject of submissions on behalf of the Applicant, but which should no longer overly concern the court. The first was the Applicant's contention that the delivery of the Respondent's draft direction was out of time because it was sent by email at one minute past 5pm on 5 April, 2016. That concession by the Applicant was entirely appropriate. The decision by Mr. Justice Morris in *Lancefort v. An Bord Plenála & Ors.* [1997] IEHC 83, made it clear, with regard to a statutory time limit of two months, that: -

"If it was meant to reduce the time limit so as to have it expire at 5 o'clock on the last day of the two-month period then in my view it would have expressly said so. The ordinary interpretation of the statute under the Interpretation Act of 1937 provides that at s.11(h) that the period of time, where it is intended to end on a particular day, that that day shall unless contrary intention appears be deemed to be included in such period. It appears to me to follow that the whole of the day...must be regarded as part of the limitation period since no contrary intention appears in the section."

174. On day four, counsel for the Applicant also informed the court that it should not overly concern itself with the submission made that the Applicant contended that there had been no consultation with the Applicant, as such. Counsel for the Applicant submitted that, although technically true, it was equally clear that a limited company controlled by the shareholders of the Applicant, with common directors, was aware of the Minister's submission and draft direction and made extensive representations about them, based on the incorrect assertion that it was the owner of the Applicant's lands and, accordingly, the Applicant's contentions in relation to the foregoing issue were, as counsel for the Applicant put it, "*somewhat lacking in real substance*". The foregoing was an entirely appropriate concession or clarification to be made, in light of the facts as found by the examination of the evidence in this case, as detailed above.

Discussion and Decision

175. The challenge in these proceedings is to a direction made by the Respondent on 8th August, 2015 pursuant to s. 31 of the PDA 2000. For the sake of clarity it is useful to refer again to certain legislative provisions, as they applied on 8 August, 2016, beginning with s. 31(1) of the 2000 Act, as follows:-

"31.(1) Where the Minister is of the opinion that -

- (e) a planning authority, in making a development plan, a variation of a development plan, or a local area plan (in this section referred to as a "plan") has ignored, or has not taken sufficient account of submissions or observations made by the Minister to the planning authority under section 12, 13 or 20
- (f) [...]
- (g) the plan is not in compliance with the requirements of this Act, or

(h) [...]

the Minister may in accordance with this section, for stated reasons, direct a planning authority to take such specified measures as he or she may require in relation to that plan.”

176. The Direction in the present proceedings was issued pursuant to section 31(1)(a) and (c). As can be seen from paragraph (i) of the Direction, the Respondent Minister’s opinion was that the Notice Party, in making the Sallins LAP 2016-22, ignored or failed to take sufficient account of submissions made by the Respondent in January, 2016. Thus, the Respondent relied, inter alia, on s. 31(1)(a) of the 2000 Act.
177. Paragraph (ii) of the Direction goes on to state that the Minister is of the opinion that the Sallins LAP 2016-22 is not in compliance with the requirements of ss. 19, 20 and 28 of the Planning and Development Act, 2000. In that manner, s. 31(1)(c) was *also* relied on as a basis for the Direction.
178. In addition to the Respondent’s 8th August, 2016 letter, the Direction was accompanied by a “Statement of Reasons” and, earlier in this judgment, I set out, verbatim, the Statement of Reasons. Extracts from the statement of reasons include the following:-
- The Minister’s 8th January 2016 written “...*submission advised Kildare County Council that Proposed Material Alteration No. 20 was not in compliance the (sic) requirements of s. 28 Ministerial Guidelines (specifically the Development Plan’s Guidelines, 2007) and its statutory responsibilities*”;
 - “*Kildare County Council was advised that this specific proposed material alterations to the draft Sallins local area plan, 2016-22 should not be accepted by the planning authority in order to ensure compliance with the Minister’s Guidelines.*”;
 - “*The Sallins LAP indicates a housing unit target of 240 units for the 2016-22 period (Table 3 of the LAP). The additional residential zoning proposed could potentially yield a further 365+ housing units for Sallins generating a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed residential zoning is, therefore, not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is, therefore, not in compliance with s. 19(2) of the Planning & Development Acts, 2000-15...*”;
 - “*The peripheral and greenfield nature of the site is also at odds with planning guidance on the zoning of lands provided in the Development Plan Guidelines (2007) issued by the Minister under section 28.*”;
 - “*Material Alteration No. 20 is contrary to the main aim of the LAP to consolidate Sallins through developing the centrally located sites within the town. It is not justified on the basis of housing need, policy or existing supporting infrastructure as identified in s. 4.12 of the Guidelines as determining criteria.*”;

- *"In particular, a residential zoning to the northeast of the town to the rear of existing established development would be contrary to the sequential approach to the zoning of lands...";*
- *"In light of the above, the Minister is of the opinion that the Planning Authority has ignored, or has not taken sufficient account of the said written submission, in that the Planning Authority proceeded to object a policy objective which would be inconsistent with national Government Policy (the Development Plan's Guidelines, 2007) and the requirements of s. 19(2) of the Planning & Development Acts, 2000-15 and is not consistent with the Core Strategy of the Kildare County Development Plan, 2011-17";*
- *"The decision by the members to alter the policy in regard to the zoning objectives as outlined in this direction do not provide for proper planning and sustainable development and, therefore, the Sallins Local Area Plan, 2016-2022 is not in compliance with the requirements of s. 19, s. 20 and s. 28 of the Planning and Development Act (as amended)."*

179. Section 31(1)(a) does not say that, where a planning authority has ignored or has not taken sufficient account of the Minister's submissions, the latter may issue a Direction. Nor does s. 31(1)(c) state that, where the local area plan is not in compliance with the requirements of the 2000 Act, the Minister may make a direction. Rather, the Minister's power to issue a direction arises where the Minister *"is of the opinion"* that this is so. The test under s. 31(1) is clearly a subjective, as opposed to an objective, one. The Minister's opinion must be lawfully reached and, in the present case, the Applicant submits that the Respondent's decision was, *inter alia*, irrational, unreasonable and based on error. Insofar as s. 31(1)(c) is concerned, the section does not require that the Local Area Plan is not in compliance with the Act, but that the Minister *"is of the opinion"* that this is so.

Legal obligations regarding a Core Strategy

180. Section 10(1) of the 2000 Act makes it clear that a development plan consists of a written statement and a plan or plans indicating the development objectives for the relevant area. With regard to the written statement, s. 10(1A) provides that it:-

"...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 Spatial Strategy and the Regional Spatial and Economic Strategy."

181. Thus the requirement for a development plan to have a core strategy is mandatory. The 2000 Act is specific about what must be contained in the core strategy of a development plan. In that, s. 10(2A) states:-

"Without prejudice to the generality of subsection (1A), a core strategy shall –

- (a) *provide relevant information to show that the development plan and the housing strategy are consistent with the National Spatial Strategy and regional planning guidelines,*
- (b) *take account of any policies of the Minister in relation to national and regional population targets,*
- (c) *in respect of the area in the development plan already zoned for residential use or a mixture of residential and other uses, provide details of–*
 - (i) *the size of the area in hectares, and*
 - (ii) *the proposed number of housing units to be included in the area,*
- (d) *in respect of the area in the development plan proposed to be zoned for residential use or a mixture of residential and other uses, provide details of–*
 - (i) *the size of the area in hectares,*
 - (ii) *how the zoning proposals accord with national policy that development of land shall take place on a phased basis*
- (f) *in respect of the area of the development plan of a county council, set out a settlement hierarchy and provide details of–*
 - (i) *whether a city or town referred to in the hierarchy is designated as a gateway or hub for the purposes of the National Spatial Strategy,*
 - (ii) *other towns referred to in the hierarchy,*
 - (iii) *any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to towns and cities referred to in the hierarchy,*
 - (iv) *any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to the areas or classes of areas not included in the hierarchy,*
 - (v) *projected population growth of cities and towns in the hierarchy,*
 - (vi) *aggregate projected population, other than population referred to in subparagraph (v), in–*
 - (I) *villages and smaller towns with a population of under 1,500 persons, and*
 - (II) *open countryside outside of villages and towns..”*

182. It is not in dispute that the provisions of the Planning and Development (Amendment) Act, 2010 strengthened the requirement for regional plans to align with the National Spatial Strategy and also strengthened the link between national and regional spatial planning policies and planning at local authority level. The 2010 Planning and Development (Amendment) Act (the 2010 Act) introduced a statutory requirement that development plans include a Core Strategy. With regard to the development of housing, a Core Strategy must be evidence based and must outline the location, quantum and phasing of future residential development. The Core Strategy must demonstrate that the development plan and its objectives are consistent with national and regional development objectives set out in the national special strategy and regional guidelines, particularly with regard to the settlement hierarchy and allocation of housing growth. The Core Strategy must give effect to the settlement hierarchy by setting population targets in accordance with regional targets along with associated requirements for housing land. In essence, County Development Plans and Local Area Plans must clearly specify the quantum of land zoned for residential development and the amount of housing which can be developed on such lands.
183. A core strategy must include a "settlement hierarchy" which ranks each settlement of 1,500 people or more. Section 10(2C) of the 2000 Act details what is meant by a settlement hierarchy. The 2000 Act requires that a settlement hierarchy include projected population growth and housing unit numbers, the foregoing being parts of the core strategy. It is not in dispute that every Development Plan must contain a Core Strategy which must give effect to the Settlement Hierarchy. Thus, county development plans and local area plans must specify, inter alia, the amount of land being zoned for residential development and the amount of housing which could be developed on the said lands. Furthermore, the quantum of land zoned for housing and the amount of housing units which could be built on such land, and the relevant population growth implied by such housing units, must align with what might be called the "parent" Core Strategy as found in the parent development plan.
184. As a matter of basic common sense, the allocation, in a county development plan of specific housing unit targets for each of the multitude of settlements within a county would be rendered entirely meaningless if local area plans could freely depart from the allocations specified at county level, with an obvious negative implication for the planned provision of and distribution of infrastructure and amenities. It is not in dispute that legislative reforms introduced by way of the Planning and Development (Amendment) Act of 2010 emphasised the requirement for consistency by, inter alia, introducing a requirement that development plans include a Core Strategy, the objectives of which must be consistent with national and regional development objectives as set out in the National Spatial Strategy and regional guidelines, particularly regarding the settlement hierarchy and allocation of housing growth.
185. Earlier in this judgment, I quoted extensively from the Kildare County Development Plan which was in force as of 8th August, 2016, namely, the KCDP 2011- 2017. It is beyond doubt that the County Development Plan contained a very detailed core strategy,

including a settlement hierarchy. Among other things, specific targets were set out in relation to population growth and housing unit numbers for each settlement of more than 1,500 people in the county of Kildare. It will be recalled that, in relation to Sallins, Table 3.3, under the heading "Settlement Hierarchy – Population and Housing Unit Allocation 2006-2017" specified a housing unit target of 527 for the period to 2017. In terms of the settlement hierarchy, the KCDP, 2011-17 designated Sallins as a Small Town. This is clear from table 2.2 of the KCDP, 2011-17. The said County Development Plan, as part of the core strategy, set a population target for the county of 237,458 persons by 2017 and this is clear from s. 3.5 of same. Furthermore, it was specified that the population target for the county, gave rise to the need for 27,982 additional residential units, in circumstances where the population growth represented a 27% increase, over the life of the then plan. This resulted in an average of 2,544 housing units to be delivered per annum. Again, this was specified in the core strategy of the County Development Plan at s. 3.5 which stated, *inter alia*, that "The distribution of housing units over the planned period is in accordance with the Core Strategy for the county and the population and unit allocations for each category in the hierarchy are outlined table 3.2".

186. It is clear that the County Development Plan represented a sophisticated exercise which included, *inter alia*, ascribing a percentage of anticipated population growth to each of the settlement types within the county and setting housing unit targets reflective of this. It need hardly be pointed out that no challenge is made in the present proceedings to the KCDP 2011-2017 or to its successor. Chapters 2 and 3 of the KCDP 2011 -2017 are, however, particularly relevant to the present proceedings because they set out the core strategy and settlement hierarchy. It is not necessary to repeat here, the various quotes set out earlier in this judgment from chapters 2 and 3 of the KCDP, 2011-2017 which set out the core strategy including settlement hierarchy, but the passages quoted earlier, including, in particular, ss. 3.1 to 3.9 and Tables 3.2 and 3.3 are particularly relevant. This is because of the statutory requirement, introduced in 2010, that a local area plan be consistent with the core strategy of its parent development plan, having regard to s.19 (2) of the PDA 2000.

Section 19(2) of the PDA 2000

187. Section 19(2) of the 2000 Act states the following:-

"(2) A local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional, spatial and economic strategy that apply to the area of the plan and shall consist of a written statement and a plan or plans which may include-

(a) objectives for the zoning of land for the use solely or primarily of particular areas for particular purposes..."

188. The mandatory term "shall" is used in s. 19(2) and, for present purposes, the foregoing provision sets out a statutory requirement that the Sallins Local Area Plan must be consistent with the core strategy of the Kildare County Development Plan, its parent. Reference has been made to the core strategy in the County Development Plan, including

population and housing unit targets for Sallins which is a Small Town in the settlement hierarchy. If the Sallins LAP is inconsistent with the core strategy of its parent plan, it is thereby in breach of s. 19(2) of the 2000 Act.

189. The specific allocations for Sallins in respect of population growth and housing unit targets in the County Development Plan can fairly be considered to be pieces of a larger jigsaw, the entire picture being the allocation on a countywide basis of targeted housing unit growth. No particular planning or legal expertise is required to understand that concept. It is plain from the contents of the County Development Plan. For instance, it is perfectly clear from table 3.3 on page 39 of the KCDP 2011 - 2017 that there are no less than 22 objective, specific and unique housing unit targets, of which the 527 target for Sallins is just one and which, collectively, make up the County total housing unit target for the life of the County Development Plan to 2017. There is no room for doubt about what each of the individual targets mean, nor is there any doubt about the fact that if any one of the 22 specific housing unit targets were to be altered at a local level, it would render meaningless the exercise done on a Countywide basis (which is reflected in Table 3.3). It is not in dispute that there are also strategies "upstream" of the County Development Plan, with which the County Development Plan must align. These include the National Spatial Strategy and the Regional Planning Guidelines for the greater Dublin area. Logic and common sense suggest that a Local Area Plan which is "downstream" of the County Development Plan should also be consistent with the contents of the latter. This logic is reflected in statutory obligations such as s.19(2) requiring that a LAP be consistent with its parent plan.
190. There is no ambiguity in relation the meaning of the County Development Plan, including the Core Strategy and Settlement Hierarchy contained therein. It does not require any particular expertise, in planning or in law, to understand the "2006-2017 Housing Units target" of "527" which was allocated for Sallins in the KCDP 2011-2017 and which appears, *inter alia*, on internal page 39 of the County Development Plan (in Table 3.3, entitled "Settlement Hierarchy - Population and Housing Unit Allocation 2006 - 2007"). A very specific target in relation to housing units has been allocated to Sallins, namely 527 housing units for the period to 2017. Nor does it require any particular expertise to understand, when looking at Table 3.3 on p.39 of the County Development Plan, that the housing unit target allocated to Sallins represents one piece of a much larger jigsaw made up of the specific housing unit targets allocated to each and every Large Growth Town, Moderate Sustainable Growth Town and Small Town throughout County Kildare (of which there are 17 of the foregoing, including Sallins), with 4 further housing unit targets being allocated between 11 villages, 21 rural settlements, 23 rural nodes and Rural Dwellers, making up a County Total in respect of the housing units target of 27,982 for the period 2006-2017. In the manner in which is clear from Table 3.3, no less than 22 different and very specific housing unit targets each comprise essential pieces in the jigsaw which makes up the County housing units target for the life of the plan.
191. It requires no planning or other expertise to see how specific each of these 22 individual housing unit targets is. No two are alike. Each relates to an allocated population target

for the settlement concerned, of which there are 22 specific population targets, making up the County total of 237,458. The care which has so obviously been taken in the County Development Plan to allocate 22 distinct housing targets which, collectively, make up the County Total for the life of the plan, self-evidently means that if a settlement were to make a local area plan, during the lifetime of the County Development Plan, which allocated a *different* housing unit target than found in the County Development Plan, it would have the potential to undermine, fundamentally, the targets set in the County Development Plan, both in terms of total numbers of housing units and their allocation throughout the County in accordance with the Core Strategy and settlement hierarchy in the County Development Plan.

192. It is uncontroversial to say that “objectives” of the Core Strategy and settlement hierarchy, insofar as a County Development Plan is concerned, include allocating future population growth between various settlement types, having regard to criteria such as settlement size, available and potential infrastructure and the capacity of the settlement to contribute towards the objectives of the Core Strategy. What cannot be in doubt is that the targets in the County Development Plan including, in particular, those set out in Table 3.3 of the KCDP 2011-17 are specific. They admit of only one interpretation. They are precise figures, representing very deliberate and particular allocations made by the local authority. The specific and objective housing unit target for Sallins is 527 and that target is not open to subjective reinterpretation. It is an objective fact.
193. It is clear that, as a matter of fact, the Respondent Minister took the view that the Sallins Local Area Plan was required to be compliance with its “parent” plan, being the KCDP 2011-17, dated 2 May 2011. I am satisfied that the Minister’s view is, as a matter of law, correct. I say this in light of s.19(2) of the Planning & Development Act, as amended, to which I have referred above. It is a matter of fact that the Sallins LAP, as adopted by the elected members, incorporated Material Alteration 20. This increased the quantum of land for residential development by approx. 12 ha. or 30 acres meaning that, in the Sallins LAP as adopted, the total unit potential of lands zoned residential increased to 1,123. Earlier in this judgment I made reference to versions (1 to 5) of “Table 5” of the Sallins LAP. I am satisfied, that as a matter of fact, what has been described earlier in this judgment as “version 4” of table 5 reflects the decisions made by the elected members and is the Table 5 which ultimately formed part of the Sallins LAP adopted by the elected members on 9 March 2016. It is beyond doubt that this Table 5 specified a residential unit potential of 1,123 in respect of Sallins for the life of the LAP.
194. It is a matter of fact that 1,123 housing units, as specified in the Sallins LAP adopted by the elected members, is very substantially in excess of the then target for Sallins of 527 units, allocated in the Parent County Development Plan. In light of the evidence which has been examined at length in this judgment, I am satisfied that, as a matter of fact, the residential zoning in the Sallins LAP, as adopted by the elected members, was not consistent with the Core Strategy of the then Parent County Development Plan, namely the KCDP 2017-22. The residential zoning, which included Material Alteration 20, resulted in a housing unit potential for Sallins which grossly exceeded, and was therefore

materially inconsistent with, the housing unit target which had been allocated to Sallins in the said County Development Plan. As such, I am satisfied that the local area plan, as adopted by the elected members, was not in compliance with the requirements of the 2000 Act, specifically s.19(2).

195. As Mr. Justice Simons stated in his 2019 judgment in *Heather Hill Management CLG v. An Bord Pleanála* [2019] IEHC 186, a case which concerned provisions in the Galway County Development Plan: -

“51. The meaning of the County Development Plan is unambiguous. The figures set out are objective, and not open to reinterpretation. This is not a case where planning policy has been set out in subjective terms or has left over a discretion as to how it should be interpreted.”

196. Those comments apply equally in this case. Insofar as the Applicant suggests that, because the population of Sallins exceeded 5,000, the elected member were entitled to ignore the designation of Sallins, in the County Development Plan, as a small town and/or were entitled to ignore the specific targets in relation to housing units allocated for Sallins in the County Development Plan and/or were entitled to take the view that s.19(2) of the 2000 Act no longer applied and that it was lawful to adopt a Local Area Plan inconsistent with the objectives of the County Development Plan, its core strategy, including housing strategy, I reject any such submission as fundamentally misconceived.
197. The logic of such an approach is that, regardless of the objectives and specific targets in a County Development Plan for each and every settlement in the hierarchy, the change in population from 5,000 persons to 5,001 triggers a “downstream” entitlement to ignore the “upstream” targets and, unilaterally, to set inconsistent targets which, self-evidently, render the County target meaningless. But that is not the end of the potential problems created by the argument that the designation of Sallins as a Small Town could be ignored and that the elected members were entitled to consider Sallins to be a Moderate Sustainable Growth Town (being the very first of the “*Key Planning Arguments in Favour of Amendment No.20*” as appears from the document of that name which I have previously referred to) . If the local population were to subsequently drop below 5,000, the logic of the such an argument is that the increased “downstream” target in the Local Area Plan is devoid of a basis, as the settlement automatically reverts to Small Town status upon having a population less than 5,000 just as it supposedly acquired Moderate Sustainable Growth Town status by virtue of a population over 5,000. The foregoing is plainly entirely unworkable and would set at nought the very concept of careful planned development as well as the primacy of a County Development plan over a local one. The reality is, of course, the views and wishes on the part of elected members on 9 March 2016 as to the status which Sallins should have, given its population, are wholly irrelevant to the fact of the status of Sallins as a small town, so designated under the County Development Plan and to the objective and specific housing targets allocated to Sallins. However, it appears to me that the subjectively held views of the elected members in relation to the status of Sallins, given its then population, played no small part in the

decisions taken by them on 9 March, 2016 and this was not permissible having regard inter alia, to 19(2) of the 2000 Act. Furthermore, sections 20(3)(r) of the Act makes clear that:-

"When performing their functions under this subsection, the members of the planning authority shall be restricted to considering the proper planning and sustainable development of the area, 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".

198. When the elected members considered material alteration 20 and the question of adopting it into what was then the draft LAP for Sallins, they were not at large in performing their functions. The carrying out of their functions was explicitly restricted by s.20(3)(r). Their consideration was restricted to certain matters including "*statutory obligations*". In my view, the decision of the local authority to adopt the Sallins LAP, inclusive of material alteration 20, based, inter alia, on the proposition that Sallins should not longer be considered to be a Small Town, thereby rendering the Local Area Plan inconsistent with the County Development Plan and, hence, breaching statutory obligations under s.19(2), also evidences a failure on the part of the elected members to comply with the provisions of s.20(3)(r).

Comparing Table 3.3 in the KCDP 2011-17 with Table 5 in the Sallins LAP as adopted

199. I am satisfied that, as a matter of fact, the Sallins Local Area Plan, as adopted by the elected members, is not consistent with the core strategy in the KCDP, 2011-17 and is not consistent with the objectives set out in the said County Development Plan, in particular, the contents of the Settlement Strategy detailed in the KCDP, 2011-17. The inconsistency between the Local Area Plan and the County Development Plan is starkly illustrated by comparing the contents of Table 3.3 (which can be found on internal p. 39 of the County Development Plan) and Table 5 in the Local Area Plan, as adopted by the elected members. In the manner explained above, the former allocates a specific housing unit target of 527 for Sallins in respect of the period to 2017, whereas the latter specifies a housing unit potential for Sallins of 1,123.

The basis for the Minister's Direction – S. 31(1)(c)

200. A key question for this Court is whether the Respondent Minister was entitled to hold the opinion that the local area plan was not in compliance with the requirements of the 2000 Act when he issued his 8 August 2016 Direction. The meaning of s.19 (2) of the 2000 Act is plain and unambiguous. The phrase "*shall be consistent with*" has an obvious meaning and it is a matter of fact that the contents of the Sallins LAP, as adopted by the elected members, was *inconsistent* with the contents of the KCDP 2011-17. The housing unit potential of 1,123 housing units for Sallins, in the LAP adopted by the elected members, cannot be considered to be *consistent with* its parent plan's target of 527 housing units for Sallins. The evidence demonstrates that there was ample material before the Respondent on foot of which he could base a view that the adoption by the elected members of the Sallins LAP, which included Material Alteration 20, constituted a breach of s.19 (2). I have examined that material earlier in this judgment and in great detail. The

Respondent Minister's opinion that the Sallins LAP, as adopted by the elected members, was not consistent with the objectives of the Kildare County development plan including its core strategy, was a rational and a reasonable view for the Respondent to take, in light of the evidence before him, as examined in this judgment.

201. It should be emphasised that the inconsistency between a specific target of 527 housing units, as allocated in the County Development Plan, compared to housing unit potential of 1,123 in the Local Area Plan adopted by the elected members, was not the only way in which it was submitted that the Local Area Plan was inconsistent with its parent plan's Core Strategy and inconsistent with the objectives of same and any regional, spatial and economic strategy applicable. It is however, a stark example of inconsistency and in my view it can fairly be said that, in adopting the Sallins LAP, due respect was not shown to the position of Sallins in the settlement hierarchy and Core Strategy of the Parent County Development Plan. The housing targets allocated for Sallins in the County Development Plan, which were plainly intended to be binding as a matter of *fact* (in light of the contents of the KCDP 2011-17) and as a matter of *law* (in light of section 19 (2) of the 2000 Act), were not respected when the elected members adopted the LAP.
202. The material which was before the Respondent Minister when he made his 8 August, 2016 decision has been examined, at some length, earlier in this judgment. It is not necessary to repeat its contents. It is sufficient, however, to note that when the Minister came to the opinion that the Sallins local area plan as adopted by the elected members was not in compliance with the requirements of the 2000 Act (which Act, of course, includes s.19(2)), the Respondent Minister had before him, among other material, the 24 June 2016 Inspector's independent review as carried out by Mr. Des Johnson, planning and environmental consultant, pursuant to s.31 of the Act. That 24 June 2016 report stated *inter alia* the following:
- "MA 20 proposes to zone 12 ha. (approximately) of the subject lands as "New Residential"). These lands are on the north eastern periphery of the town and would entail an extension of the LAP boundary. The reasons for the draft Direction state that these residentially zoned lands could yield a further 365 + units for Sallins generating a total of 1,123 dwellings as potential housing to be provided in the LAP. *I consider the draft Direction and the reasons given to be correct in respect of this proposed zoning.*" (emphasis added)
203. As to the significance of the foregoing, it will be recalled that the reasons given for the draft Direction comprised the 5 April 2016 letter from then Minister Coffey to the Chief Executive of the Notice Party, the draft Direction itself and an accompanying Statement of Reasons. In the second paragraph of the first page of the 5 April, 2016 letter, the then Minister stated *inter alia*, that he was considering issuing a Direction pursuant to s.31 of the 2000 Act, as amended and the Minister went on to state that he had formed the provisional opinion "...that the plan as adopted is not in compliance with the requirements of s.19...of the 2000 Act as amended." Reference to the "plan" was, of course, a reference to the Sallins LAP, as adopted by the elected members on 9 March 2016. Thus, the

independent inspector was expressing an expert view, in his 24 June 2016 report, that the draft Direction and reasons, of 5 April 2016, were correct in respect of Material Alteration 20. One of those reasons was plainly the view that adoption of the local area plan involved a breach of s.19. Leaving aside this Court's view that there was, in fact, a breach of s.19(2), it is clear that this was the considered opinion of the Independent expert who carry out a review and reported to the Minister on 24 June 2016. Lest there be any doubt about the matter, it is also a fact that penultimate paragraph of the Statement of Reasons which accompanied the draft Direction, and which was enclosed with the then Minister's 5 April 2016 letter, specifically referenced s.19(2) of the Act, which paragraph stated *inter alia* that: -

"...the Planning Authority proceeded to adopt a policy objective which would be inconsistent with national Government policy (the Development Plan Guidelines, 2007) and the requirements of s.19(2) of the Planning & Development Acts, 2000-15 and is not consistent with the Core Strategy of the Kildare County Development Plan 2011-17."

204. Furthermore, the final paragraph on the Statement of Reasons which accompanied the Minister's draft Direction of 5 April, 2016 put matters in very clear terms as follows: -

"The Sallins LAP indicates a housing unit target of 240 units for the 2016-22 period (table 3 of the LAP). The additional residential zoning proposed could potentially yield a further 365 + housing units for Sallins generating a total of 1,123 dwellings as potential housing to be provided in the LAP. The proposed residential zoning is therefore not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s.19(2) of the Planning & Developments Acts 2000-15 which requires that 'a local area plan shall be consistent with the objectives of the Development Plan, its Core Strategy, and any regional spatial and economic strategy that apply to the area of the plan'".

205. Section 19 of the 2000 Act is again referred to on the 2nd page of the Minister's 5 April 2016 letter which gave notice that the Respondent was considering issuing a Direction under s.31. The second paragraph of the Minister's letter referred to the local area plan as adopted by the elected members and stated *inter alia* the following:

"...in making such a plan, the members of the planning authority have failed in their statutory duty under s.19..."

206. Section 19 of the 2000 Act is referred to for a fifth time in the final paragraph of the Statement of Reasons which accompanied the Respondent's draft direction on 5 April, 2016 as follows: -

"The decision by the members to alter the policy in regard to the zoning objectives as outlined in this directive do not provide for proper planning and sustainable development and therefore the Sallins Local Area Plan 2016-2022 is not in

compliance with the requirements of s.19, s.20 and s.28 of the Planning & Development Act 2000 (as amended)."

207. Returning to the independent review by Mr. Des Johnson, Inspector, which was prepared in accordance with s.31 of the 2000 Act, it is a matter of fact that internal page 7 of Mr. Johnson's 24 June 2016 report told the Minister that Mr. Johnson considered the draft Direction and the reasons given for it to be correct. In the manner set out above, the draft Direction and the reasons for same made repeated references to a breach of s.19, in particular s.19(2), of the 2000 Act arising out of the adoption of the local area plan on 9 March, 2016. Thus, there was ample material before the minister on which he could base the opinion he formed. It is also plain from the Inspector's report that the Minister was made aware of, *inter alia*, the submissions which had been made to the Notice Party by elected members in *favour* of MA20 and these were summarised, as were the public submissions in favour of MA20 in the Inspector's report. This is clear from ss. 5.1 and 5.2 of the Inspector's 24 June 2016 report in which the Inspector made reference to the report prepared by the Chief Executive of the Notice Party in respect of the submissions received. The Respondent Minister was also informed of the Chief Executive's view, which is summarised at s.5.4 of the Inspector's report. The sixth bullet point in s.5.4, under the heading of "Summary of Chief Executive's response" is as follows: -

"The zoned lands in MA20 could potentially yield an additional 365 + houses. This would be inconsistent with the Core Strategy. MA20 is not justified on the basis of housing need."

208. It is clear that the Inspector had invited submissions, not only from the Chief Executive, but also from elected members of Kildare County Council. Section 6 of the independent Inspector's report demonstrates that, prior to issuing the direction on 8 August, 2016, the Minister was made aware of, *inter alia*, the contents of six separate submissions made by elected members, all of which were in *favour* of MA20 and these are summarised by the independent Inspector in ss. 6.2, 6.2.1, 6.2.2, 6.2.3, 6.2.4 and 6.2.5. A submission by Sallins Community Council was also summarised by the Inspector at s.6.3 of his report. It is clear that the Inspector informed the Minister that the elected members for Sallins were "*unanimously in favour*" of the LAP, as adopted. The Inspector also informed the Minister that there was "*overwhelming support for MA20*" both from Naas Municipal District and the wider community. The Minister was also informed that "*of 2149 submissions made to Kildare County Council, 2148 are opposed to the draft Ministerial Direction*". The foregoing is clear from the contents of s.9.4 of the independent Inspector's report, under the heading "*submissions supporting MA20*". It is clear from the 24 June, 2016 report that the independent Inspector considered the foregoing submission prior to reaching the decision which he set out at s.9.8 on internal p.27 of his report with regard to MA20.

209. In short, the Inspector considered the draft Direction and the reasons for it to be correct and did so against the background of submissions, including those in *favour* of MA20. With regard to the 30 acres of land, zoned residential pursuant to the adoption of MA20,

the Inspector set out his view clearly, stating in the third paragraph of s.9.8, on internal page 27 of his report, that:-

"The proposed zoning appears to be inconsistent with other statements in the Sallins LAP 2016-2022. For example, s.5.0(6) states that the quantum of residentially zoned lands in the Sallins LAP exceeds the target set in the Core Strategy of the Kildare CDP 2011-2017 'sites with a valid planning permission will remained zoned in this plan while a small quantum of additional lands for residential purposes will be provided to cater for future housing needs. Lands which are not required for the housing market target will be appropriately rezoned'. There is no information before me to indicate that the subject lands have a valid planning permission."

210. The foregoing was also material before the Minister when he formed the opinion, *inter alia*, that the Sallins LAP, as adopted by the elected members on 9 March 2016, was not in compliance with the requirements of the 2000 Act, as amended, thereby triggering the Minister's power to make a direction under s.31(1)(c). It was not the only material. As the documentation which I have examined earlier in this judgment illustrated, it is a matter of fact that the views of (a) the professional planners within the Notice Party, (b) the views of the officials within the Minister's department and (c) the views of the Independent inspector were entirely consistent insofar as MA20 was concerned – namely that its adoption would constitute a breach of section 19(2). This is clear from the contents of the various documents furnished to the Minister prior to the Respondent coming to the opinion which he formed and issuing the Direction of 8 August 2016, all of which I have examined in detail earlier in this judgment.

211. The foregoing included an 11 July 2016 letter from Mr. Kenny of the Notice Party to the Respondent Minister. Among other things, that letter welcomes the recommendation of the Minister to omit the MA 20 zoning "C: New Residential". Mr. Kenny's views and the reasons for them were made clear to the Respondent, including in s. 2.1 of the 11 July 2017 submission, in the form of the Notice Party's letter. Referring to a prior report by the Chief Executive of the Notice Party, s. 2.1 of Mr. Kenny's letter states, *inter alia*, the following: -

"The Sallins Local Area Plan is informed by the RPG's and the Core Strategy of the CDP. The LAP indicates a housing unit target of 240 units for the Plan period (2016 – 2022). The additional residential zoning proposed under MA 20 alone could potentially yield a further 365+ housing units for Sallins, which would be inconsistent with the Core Strategy of the Kildare CDP 2011 – 2017 and the draft Kildare CDP 2017 – 2023 (published May 2016)".

212. The foregoing submission made to the Minister on 11 July 2016 is plainly to the effect that there is a breach of s. 19 (2) of the 2000 Act. Thus, it was material before the Respondent to the effect that the Local Area Plan was not in compliance with the requirements of the 2000 Act. Just as with the information set out in the independent Inspector's report, the foregoing was material upon which the Minister could rely in

forming his opinion for the purposes of exercising the powers conferred on the Respondent under s. 31(1)(c).

213. Similar comments apply in relation to the 28 July 2016 report by Mr. Stewart Logan, planning adviser. I have quoted as some length from his report earlier in this judgment and there is no necessity to repeat all of those quotes. It is however a fact that the 28 July 2016 report informed the Respondent, *inter alia*, that there was a breach of s. 19(2). The first paragraph on internal p. 6 of the 28 July 2016 report could not be clearer and stated the following: -

“The Sallins LAP, as adopted inclusive of Material Alteration 20, is not in compliance with s. 19 (2) of the Planning & Development Acts 2000 – 15 which requires that ‘a local area plan shall be consistent with the objectives of the development plan, its core strategy, and any regional spatial and economic strategy that apply to the area of the plan’. The Ministerial Direction is required to delete the excessive residential zoning of the LAP and ensure compliance with the Planning & Development Acts 2000 – 15 and statutory Ministerial Guidelines”.

214. Furthermore, the second paragraph on p.8 of the same document states as follows: -

“The recommendation of the Inspector appointed concurs with the Draft Direction in deleting the excessive residential zoning proposed. Such an additional zoning is not in compliance with s. 19(2) of the Planning & Development Acts 2000 – 15 and is not in compliance with Development Plans (Guidelines) issued by the Minister under s. 28 of the Planning & Development Acts 2000 – 15”.

215. Earlier in this judgment I also referred to and quoted from the 3 August 2016 report authored by Mr. Eoin Bennis of the Respondent’s forward planning section. Again, this includes advice to the Respondent Minister that the Sallins Local Area Plan, as adopted by the elected members, breached s. 19(2) of the 2000 Act. This is clear from the 4th page in which Mr. Bennis confirms that the forward planning section have assessed the Inspector’s report and have concluded that: -

“1. The need for the residential zoning is not demonstrated or quantified and the zoning is contrary of the Core Strategy and settlement strategy of the Kildare County Development Plan . . .”

216. The conclusion that the zoning in the Sallins Local Area Plan “. . . *is contrary of the Core Strategy and settlement strategy of...*” the County Development Plan is plainly a conclusion that s. 19(2) of the 2000 Act has been breached, given that s. 19(2) requires a local area plan to be consistent with the objectives and Core Strategy of the County Development Plan.

217. Having regard to the evidence, I am satisfied that the Respondent Minister had ample material before him which indicated that the Sallins Local Area Plan as adopted by the elected Members on 9 March 2016 breached s. 19(2) of the 2000 Act. I am satisfied that

the conclusion which the Minister reached, namely that the Local Area Plan was not in compliance with the requirements of the 2000 Act was a conclusion which, on any analysis, was open to him to make. I am satisfied that the conclusion the Respondent came to was reasonable, having regard to the materials available to him. The evidence is consistent with the Respondent taking into account all matters which the Statute required and the evidence does not support any claim that the Respondent considered any matters which he was not permitted to consider. Nor does the evidence support the submission that the Respondent was acting under an error. The Minister plainly took the view that the Local Area Plan was required to be compliant with its parent plan, being the KCDP, 2011-17, dated 2nd May, 2011. That is correct, as a matter of law, in light of s. 19(2) of the Planning & Development Act, 2000. The zoning in the 2016 Local Area Plan, which included material alteration 20, as adopted by the elected representatives, was a breach of the core strategy and settlement strategy in the parent plan, as regards housing and population figures specified in the County Development Plan. That is what a range of qualified planners told the Minister. They were correct in their view. The Respondent was entitled to form the view he came to on the basis of the material before him.

Alleged error

218. Having considered the evidence which is examined in detail, in chronological order, earlier in this judgment, I am satisfied that the Respondent Minister was not told that the Applicant's lands had not been zoned for residential development in the 2009 Local Area Plan. A careful reading of the documentation reveals that the Minister was told no such thing. On the contrary the evidence demonstrates that the Respondent was told that the Applicant's lands had been zoned, including for residential development in 2009. Indeed the evidence demonstrates that, at all material times, the Respondent was aware of the correct zoning status of the Applicant's lands, having made a submission, in January 2009, as to why the Applicant's lands should not be zoned for residential development. The Respondent was, however, informed, entirely correctly, that the Applicant's lands were not zoned for residential development in the *draft* local area plan for Sallins, namely the draft LAP as published in June 2015. It is fair to say that the most significant issue of "fact" in dispute was the Applicant's contention that the Minister understood, when he issued his Direction, that the Applicant's lands had not been zoned for residential development in the 2009 LAP for Sallins. The evidence simply does not support that contention. The factual position is that the Minister was not given incorrect information but was informed, entirely correctly that the Applicant's lands were not zoned for residential development in the draft Sallins LAP as originally published in June 2015. Thus, I am satisfied on the evidence that the Minister's decision to issue the 8 August 2016 Direction was not in any way affected by error. The evidence simply does not support the proposition that the Minister was operating under a mistake or error.
219. It might also be pointed out that, no claim for legitimate expectation has been made in the present proceedings, nor is such a claim sustainable, given that s.19(6) of the 2000 Act states that:

"(6) *There shall be no presumption in law that any land zoned in a particular local area plan shall remain so zoned in any subsequent local area plan.*"

Thus, even if the Minister understood that the Applicant's lands had *not* been zoned in the previous (i.e. 2009) Sallins LAP, and I emphasise that there is simply no evidence of that, it is difficult to see the relevance of the prior zoning status, insofar as the Minister's role is concerned, given the explicit provisions of s.19(2) and 19(6). Notwithstanding the foregoing, the evidence points conclusively to the Minister having been given correct information insofar as the previous zoning status of the Applicant's lands was concerned and having formed an evidence based opinion following which he made a rational and reasonable decision which is not tainted in any way by error.

The Applicant's reliance on the decision in *Tristor*

220. Insofar as the Applicant relies on the decision in *Tristor Ltd. v. Minister for the Environment, Heritage and Local Government & Ors* [2010] IEHC 397, both the factual position and the then – legislative regime was entirely different in *Tristor* than in the case before this Court. When Clarke J., as he then was, decided *Tristor*, the Respondent Minister did not have the power to make a Direction in respect of a Local Area Plan. In *Tristor*, the High Court found that the Respondent was demanding a strategy which the Minister did not have the power to demand. In essence, the Minister had demanded a "proper" strategy and the court found that, on a proper construction of the then s. 31, the Respondent Minister did not have an entitlement to disagree with a strategy which complied with statutory requirements. The position in the present case is wholly different. In these proceedings, the Respondent was requiring that the Local Area Plan be consistent with the County Development Plan, as mandated by statute, specifically s. 19(2). The 2010 Act postdates the judgment in *Tristor*. The Respondent did not have the power, prior to 2010, to make a direction in respect of a Local Area Plan. The Respondent now does have that power and, for the reasons set out above, and having regard to the evidence before the court, including, in particular, the material which was before the Minister, I am satisfied that the Minister acted lawfully in issuing a Direction on 8 August 2016, having regard to the Respondent's statutory power in s. 31(1) (c) of the 2000 Act. The Respondent's decision did not fly in the face of reason or common sense. It was not based on any error of fact, nor did the Respondent misunderstand the legal position which pertained, in particular, the requirements of s. 19(2) and the extent of the Minister's power under s. 31(1)(c).

Two distinct bases for the decision which the Applicant challenges

221. The Direction which the Applicant seeks to impugn had two distinct bases, namely (a) and (c) of s. 31(1). In the manner detailed above, I am satisfied that the Direction was lawfully made on the basis of s. 31(1)(c). That being so, I am satisfied that, in order for the Applicant to succeed, they must successfully challenge *both* bases upon which the Respondent issued the Direction. I should add that the basis provided by s. 31(1)(c) is entirely distinct from that under s. 31(1)(a) of the 2000 Act. Section 31(1)(a) involves the Minister forming the opinion that a planning authority has ignored or has not taken sufficient account of submissions made by the Respondent to the planning authority in the

context of the latter making, inter alia, a Local Area Plan. No such considerations arise under s. 31(1)(c). Thus, even if the Respondent was in error in basing the Direction on s. 31(1)(a), any such error would not vitiate, taint or affect the separate basis for the Direction, namely s. 31(1)(c). I make the foregoing observation in light of the Supreme Court's decision in *Talbot v. An Bord Pleanála* [2008] IESC 46. The appellants in that case sought judicial review in circumstances where, of all the grounds put forward, none related to the second basis for the decision challenged. In his judgment, Mr. Justice Kearns, as he then was, stated, inter alia: -

"In my view the learned High Court judge was perfectly entitled to take the view, as he did, that as there no (sic) challenge brought to the second reason for refusing planning permission, the overall decision remained valid regardless of any challenge, successful or otherwise, to the first reason for refusal".

222. In light of the foregoing, I am satisfied that the Direction dated 8 August 2016 was lawfully made under S. 31(1)(c) and the Applicant cannot succeed in the present proceedings. For the sake of completeness, however, I feel it is appropriate to look at the second basis for the Direction.

The second basis for the Direction – S. 31 (1) (a)

223. It is clear from the face of the Direction itself that the Minister formed the opinion, for stated reasons, that the local authority, in making the Sallins LAP 2016 – 22, ignored or had not taken sufficient account of the submissions made by the Minister in January 2016. The foregoing clearly relates to the provisions of s. 31(1)(a) of the 2000 Act and constitutes a second and separate basis for the Direction which was issued. Earlier in this judgment I examined, at some length, the Respondent's 8 January 2016 submission which was in the form of a letter from Mr. Niall Cussen, principal adviser of the Respondent's forward planning section and was addressed to the forward planning section of the Notice Party. Among other things, the 8 January 2016 submission by the Respondent, stated the following with regard to Material Alterations no. 19, 20 and 21: -

"These proposals aggregate to an additional 17.45 ha of residential lands in Sallins (per revised Table 5 of the Local Area Plan) and to potentially a yield of 535 additional dwellings for the 2016 – 22 plan period. The Local Area Plan (as originally proposed) designated 19.1 ha for residential or mixed use including residential in Sallins. These additional zonings now proposed would nearly double this figure and would be contrary to the Core Strategy of the Kildare County Development Plan 2016 – 22".

224. For the Respondent to point out that the zonings proposed in the Sallins LAP would be contrary to the Core Strategy of the KCDP 2016 – 22 constitutes, as a matter of fact, a submission by the Respondent that s. 19(2) of the 2000 Act would be breached if the planning authority proceeded to make a Local Area Plan for Sallins which incorporated the residential zoning proposed in Material Alteration 20. Furthermore, the third paragraph on the second page of the 8 January 2016 submission by the Minister, contained inter alia the following: -

“Material Alteration No. 20 is contrary to the main strategy of the Local Area Plan to consolidate Sallins by developing the centrally located sites within the town”.

225. Given that the housing strategy in a local area plan must be consistent with that in its parent county development plan, the foregoing submission alerted the local authority to an anticipated breach of s. 19(2). There were other points made by the Respondent in the 8 January 2016 submission and these included inter alia: -

- that the proposed residential lands were unzoned in the draft LAP (which was published in June 2015), and were outside the boundary identified in that draft;
- that the Respondent took the view that the peripheral and greenfield nature of the site was at odds with the 2007 Guidelines issued under s. 28 of the Planning & Development Act 2000;
- the Respondent’s view was that the additional residential zoning proposed in Material Alteration 20 was not justified on the basis of housing need;
- the Respondent’s view that the proposed residential zoning would be contrary to the sequential approach to the zoning of lands (found in s. 4.19 of the 2007 Guidelines).

The Respondent’s submission to the Local Authority that the adoption of MA20 in the Sallins LAP would breach of s.19(2)

226. I will return to the foregoing submissions later in this judgment but, for present purposes, it is important to note that, as a matter of fact, the Respondent’s 8 January 2016 submission drew the local authority’s attention, inter alia, to the breach of s. 19(2) which would arise if the local authority adopted a Local Area Plan for Sallins which included Material Alteration no. 20. This is clear from the Respondent’s use of the following words in the 8 January 2016 submission:

“The Local Area Plan (as originally proposed) designated 19.1ha for residential or mixed use including residential in Sallins. These additional zonings now proposed would nearly double this figure and would be contrary to the Core Strategy of the Kildare County Development Plan 2016 – 22”.

Given that s. 19(2) provides inter alia that “a local area plan shall be consistent with the objectives of the Development Plan, its core strategy . . .etc.”, the Respondent’s submission which pointed out that the proposed residential zoning “would be contrary to” the core strategy in the parent County Development plan was a submission which, in fact, drew the Local Authority’s attention to an anticipated breach of s.19(2), were they to proceed to adopt Material Alteration 20.

To have taken “sufficient” account of the Minister’s submission

227. What is meant by the words “...has not taken sufficient account of ...” which appear in s.31(1)(a) of the 2000 Act? The Oireachtas could have used different words in this section and could, for example, have employed the phrase “...has not had regard to...” the

Minister's submissions. This is not the choice the Oireachtas made and no authorities have been opened to me in relation to the words "*sufficient account of*" which appear in the section. In my view, taking sufficient account of submissions is not the same as having regard to, or even having careful regard to, submissions. If it can be said that "*to have regard to*" is equivalent to the meaning to the phrase "*to take account of*", s.31(1)(a) goes further. What is required is that the account taken of, or the regard had to, submissions is "*sufficient*". In other words, *adequate* account must be taken of the submissions. It seems to me that by using the term "*sufficient*", the legislature was requiring that the planning authority take adequate account of the Minister's submissions. In my view, the concept of sufficiency or adequacy is not the same as "regard" or even "care". One might take account of, or consider, submissions in a *bona fide* manner, and even do so with care, yet still fail to take sufficient or adequate account of them.

228. Depending on the evidence, it may well be possible, in a given case, to determine whether account was taken of, or consideration was given to, a Minister's submission, without necessarily having to look at any decision which emerged from the consideration itself. For example, relevant minutes and or oral evidence may well set out in such detail the consideration given to each and every element of the submission in question, that the fact of the account taken of, or consideration given to, the submission will be clearly established. I do not believe the same can be said in relation to determining whether the consideration of, or account taken of, a submission was *sufficient*. To determine that question seems to me to require some analysis of the decision which was taken by the party which is said to have taken account of the submission. In other words, to determine *sufficiency* seems to me to require an analysis, not merely of the account which was taken of the submissions, but of the decision which emerged from the consideration given to the Minister's submission.
229. That is not to suggest that a planning authority will have failed to take sufficient or adequate account of the Minister's submission if they disagree with same. Counsel for the Applicant characterised the Respondent's position as being one of "whatever I say goes", insofar as the Respondent's 8 January 2016 submission was concerned. Regardless of the skill with which it was urged on the Court, I do not believe that such a characterisation is fair, in fact or in law. If the outcome of a planning authority's consideration of a Minister's submission is for the planning authority to come to a different view, for stated reasons which are clear, cogent, adequate and lawful, the sufficiency or adequacy with which account was taken of the Minister's submissions will be apparent. Plainly, the question will be one to be determined on the basis of the facts in each case. I am entirely satisfied that S.31(1)(a) does not compel a planning authority to act in accordance with the submissions or observations made by a Minister, but it must also be emphasised that a planning authority is not entirely "at large" either, insofar as the decision it makes in light of its consideration of submission by the Minister is concerned. It is uncontroversial to say that, like the Minister's, a planning authority's powers derive under statute. For example, the statutory framework in the planning acts clearly gives a local authority the power to adopt a local area plan, but the foregoing power must be exercised in a manner consistent with the statutory framework. In the present case s.19(2) mandates that a

local area plan *shall be consistent* with the objectives of the parent County Development Plan, including its Core Strategy. In the manner explained earlier in this judgment, the Local Area Plan adopted by the elected members in this case, was *inconsistent* with the requirements of the 2000 Act (specifically s.19(2)), thereby entitling the Minister to issue a Direction under s.31(1)(c). It is also a fact that the local authority was forewarned, by means of the Minister's 8 January 2016 submission, that the adoption by the local authority of what was then a draft local area plan for Sallins would be contrary to the Core Strategy of the County Development Plan. In short, the Minister's submission pointed out that a breach of statute would arise if the elected representatives adopted a Local Area Plan for Sallins which included Material Alteration 20. What was the outcome of the consideration by the local authority of this submissions? The outcome was for the local authority to adopt a Local Area Plan which, as a matter of fact, was *inconsistent* with the objectives of the County Development Plan, in particular its Core Strategy, including housing Settlement Strategy and as a matter of law, breached s.19(2) of the 2000 Act.

Did the Local Authority take sufficient account of the Respondent's submission?

230. Can it be said that *sufficient* or adequate account was taken of the Minister's submission when, after taking account of same, the Local Authority made a decision which resulted in a breach of s.19(2) of the 2000 Act, being a breach which was drawn to the specific attention of the Local Authority, both in the Respondent's submission and during the consideration of same? In my view the answer is no, it cannot. Nor can it be an answer to the breach of a statutory requirement (s.19(2)) which applies to a local area plan, for the Local Authority to assert that sufficient account was taken (within the meaning of s.31(1)(a)) before the planning authority made the decision which brought about the legislative breach.
231. Put simply, if the outcome of deliberations by a local authority was to go ahead and adopt a Local Area Plan which breached the 2000 Act, the local authority cannot be said to have taken *sufficient* account of submissions by the Minister which pointed out, in advance, that such a decision would involve a statutory breach. The local authority may well have acted in good faith. They may well have taken account of the Minister's submissions and they may even feel they took careful account of same, but in the foregoing situation they will not have taken *sufficient* or adequate account of same. In my view this is what happened in the present case, as is clear from the facts which emerge from a careful consideration of the evidence. In short, I am satisfied that such account as was taken of the Respondent's submission by the elected members of the Notice Party was not *sufficient*.
232. As to that evidence, I have earlier looked closely at the Minister's 8 January 2016 submission which was before the elected members who met on 9 March 2016. This is clear from the contents of the eight-page minutes of the meeting of Naas Municipal District which took place on 9 March, 2016. There was no suggestion in these proceedings that the said minutes were other than accurate. Those detailed minutes make clear that various arguments were put forward by the elected members. None of those arguments, however, address the fundamental submission by the Respondent that

the adoption of a Sallins Local Area Plan which included Material Alteration 20 would involve a breach of a statutory obligation which mandates that a Local Area Plan shall be consistent with its parent plan, in the manner set out in s.19(2). On p.7 of the minutes, the following is stated:

"Mr. Cunniffe said that the proposal to accept Alteration No. 20 undermines the strategy for the development of the core of the town. Furthermore, Mr. Cunniffe said that Cllr. Power's comparison to the 2009 Local Area Plan is unjustified in light of the fact that the Core Strategy was introduced under the Planning and Development (Amendment) Act 2010."

233. Quite apart from the contents of the Minister's submission itself, the foregoing is an explicit reference to the parent County Development Plan and to its Core Strategy, with which the Sallins Local Area Plan is required to be consistent and I am satisfied that the various arguments made by the elected members on 9 March, 2016, as recorded in the minutes of that date, do not address the breach of a legislative provision which would arise by adopting the LAP including Material Alteration 20. Nor is that fundamental issue addressed in any of the 10 paragraphs in the document entitled "*Key Planning Arguments in Favour of Amendment No. 20*".

The Minister's *opinion* that the local authority had not taken *sufficient* account of his submission

234. I have examined earlier in this judgment, the documents which were produced in the wake of the 9 March, 2016 decision by the local authority to adopt the Sallins LAP (inclusive of Material Alteration 20) and I have quoted from same. The question which then arises is whether and to what extent there was material before the Respondent on foot of which the Minister could reasonably form the *opinion*, as per the requirements of s.31(1)(a), that the planning authority, in making a Local Area Plan, had ignored or had not taken sufficient account of submissions or observations made by the Minister to the planning authority. In short, I am satisfied, firstly, that there was ample material before the Minister on foot of which he could form such a view and, secondly, the opinion which the Respondent came to, as per s.31(1)(a), was neither irrational nor unreasonable. The relevant material which was before the Minister on that issue has already been examined, in some detail, earlier in this judgment and it is not necessary to repeat all of it. For convenience, however, it will be recalled that in his 30 March, 2016 report, Mr. Logan, the Respondent's planning adviser prepared a report for the Minister in relation to a draft Direction. The bottom of the first page of the 30 March, 2016 report referred to the Minister's 8 January 2016 written submission to the local authority and pointed out, *inter alia*, that:

"The Council was also advised that the Sallins LAP already had sufficient zoned housing lands and that this further residential zoning would be contrary to the Core Strategy of the Kildare County Development Plan."

235. The 30 March, 2016 report went on to inform the Minister that the local authority had adopted the Sallins LAP 2016-22, including Alteration No. 20, notwithstanding the

Minister's submission and the views expressed by the Chief Executive of the local authority. Reference was then made to the submissions made by the Respondent's department to the local authority and, among other things, s.2.1 of the 30 March, 2016 report which stated, inter alia, that: "*The proposed zoning is ... not warranted in terms of the Core Strategy of the Kildare County Development Plan and is in conflict with the planned and sustainable population growth of Sallins. The LAP is therefore not in compliance with s.19(2) of the Planning & Development Acts 2000-15...*". A recommendation was made that a draft Direction be issued and this is plainly what occurred, the Minister also having had the benefit of advice set out in the 1 April, 2016 report by Mr. Bennis of the planning section and the 4 April, 2016 additional briefing note.

236. The Respondent Minister also had the benefit of the 26 May, 2016 report by Mr. Logan as well as the report, dated 24 June, 2016, comprising the Independent review by Mr. Des Johnson, Planning and Environmental Consultant, as well as the 11 July 2016 submission from Kildare County Council, in the form of Mr. Kenny's letter of that date. Furthermore, the Respondent also had the benefit of the 28 July, 2016 report by Mr. Logan and the 3 August, 2016 report by Mr. Bennis.
237. All of the foregoing material is entirely consistent in relation to the view that the adoption, by the planning authority, of a Local Area Plan for Sallins, which included Material Alteration 20, rendered the Local Area Plan inconsistent with the objectives of the County Development Plan, its Core Strategy and housing Settlement Strategy, thereby constituting a breach of s.19(2). A breach of s.19(2) in respect of the Sallins Local Area Plan means that the said LAP is not in compliance with the requirements of the 2000 Act. It is a matter of fact that the inconsistency between what was then the draft Sallins Local Area Plan and the Core Strategy of the County Development Plan is one of the issues which was explicitly drawn to the attention of the local authority in the Minister's 8 January, 2016 submission. It is also a matter of fact that the professional planners within Kildare County Council summarised the Minister's submissions for the elected members, during the meeting on 9 March, 2016 and drew the particular attention of the members to the fact that Material Alteration 20 was contrary to the main strategy of the Local Area Plan itself.
238. Regardless of what consideration was given to the Minister's submission in respect of the inconsistency between the Local Area Plan and the County Development Plan, it is a matter of fact that the elected members adopted a Local Area Plan which breached s.19(2), despite being forewarned, in the Minister's submission that this should not occur. In light of the evidence, and having regard to my analysis of the meaning of the words "*has not taken sufficient account of*", which appear in S. 31(1)(a), I am satisfied that, firstly, the planning authority did not take sufficient account of the Respondent's submissions on the issue of the additional residential zonings being contrary to the Core Strategy of the Parent County Development Plan and, secondly, the Minister was entitled to form the opinion that this was the case, having regard to the material before him.

239. In essence, there was an obligation under the law to comply with the course of action recommended by the Minister in his submission and, in circumstances where the local authority took a decision which breached s.19(2) of the 2000 Act, notwithstanding the Minister's submission, the Minister formed the opinion, as he was entitled to do given the facts and the material before him, that the local authority had failed to take sufficient account of his submission. The Minister's opinion was reasonable, rational and not based on error.
240. The evidence does not support the proposition that the Minister's submission was "ignored". That is clear from a consideration of the contents of the 9 March 2016 minutes of the special meeting of Naas Municipal District. However, the contents of those minutes also illustrate that the local authority did not address, directly or cogently, the submission to the effect that what the local authority proposed to do (by adopting a Local Area Plan which included Material Alteration 20), was impermissible. Other matters were undoubtedly considered and a range of reasons was certainly put forward, but none dealt specifically or adequately with the foregoing element of the Minister's submission. For these reasons, I am also satisfied as to the lawfulness of the 8 August, 2016 Direction which was issued on a second basis, namely ss. (a) of s.31(1).

The Minister's submission regarding Sequential Development

241. It is mandatory that the Sallins Local Area Plan comply with the objectives of the County development plan and this includes compliance with the provisions of s. 3.4.6 on p. 37 of the KCDP, 2011-17 which explains what is required by the "Sequential Approach" to development and mandates compliance with that approach, using the term "shall". The foregoing echoes the contents of the 2007 Guidelines which also set out the Sequential Approach. The view was expressed by the elected members, on 9 March 2016, that, because the lands were continuous to existing lands which had previously been developed, it would "therefore" constitute a sequential approach. That view ignores several other principles in s. 3.4.6 of the County Development Plan, such as developing land closest to the core and public transport routes first and the requirement that zoning shall extend outwards from the centre of an urban area as well as the emphasis on encouraging infill opportunity.
242. Paragraph 9 in the 1-page document entitled "Key Planning Arguments in Favour of Amendment No. 20" (a copy of which appeared immediately after the minutes of the local authority's 9 March 2016 meeting and manuscript notes upon which refer to it being an "Appendix" to the minutes of the said meeting) fails, as a matter of fact, to address all of the mandatory principles found in the County Development Plan and in the 2007 Guidelines, in respect of the Sequential Approach to development. In short, the proposition that land is adjacent to land which has already been developed, is just one of several factors which is relevant to the concept of Sequential Development as is made clear in the contents of the County Development Plan.
243. The foregoing is the factual background against which the view was consistently expressed, including by the chief executive of the Notice Party, the independent Inspector

and the planning advisers within the Respondent, that there was a *breach* of the sequential approach principle, with regard to the residential element of the Applicant's lands which the elected members adopted for development in the Sallins Local Area Plan. It is not in dispute that the planning authority was required to have regard to the 2007 Guidelines. The failure to set out reasons which address each of the different principles which apply to sequential development, as detailed in the 2007 Guidelines, is a matter of fact. I have dealt with that issue at some length when examining the evidence insofar as the March 2016 meeting is concerned and it is not necessary to repeat that here. In short, it is a matter of fact that the elected members of the Notice Party went ahead with adopting material alteration 20, notwithstanding the Minister's submission that this would involve a breach of the *Sequential Approach* principle. Even if it can be said that the elected members took account of what constituted a sequential approach, I am satisfied that the elected members did not take *sufficient* account of the Respondent's submission on this issue of sequential development and the Minister was entitled to take the view he did. I say this in light of the material which was before the Respondent and which included a series of views, consistently expressed, to the effect that zoning and development of the Applicant's 30 acres (comprising material alteration 20) would *not* represent sequential development. There was an absence of any acceptance by the local authority that residential development of the Applicant's 30 acres would be inconsistent with the sequential approach. There was an absence of any clear cogent explanation as to why, for example, the Applicant's lands should be zoned even though they are not closest to the core of Sallins, not closest to public transport routes and would not represent infill development. In short, the evidence demonstrates that there was no engagement with the *entirety* of the contents of s. 4.19 of the 2007 Guidelines on the issue of Sequential Approach and there was, I am satisfied, an *inconsistency* between adopting MA20 into the Sallins LAP and the contents of s.3.4.6 of the KCDP 2011 - 2017. In short, the elected members failed to engage with all of the principles set out in s. 3.4.6 of the County Development Plan, with which the local plan was required to comply, insofar as the sequential approach to development is concerned.

Earlier in this judgment I looked closely at the meeting of 9 March 2016 and the approach taken by the elected members with regard to the Minister's 8 January 2016 submission concerning, inter alia, Sequential Development. In the said submission, the Minister asserted that Material Alteration 20 was a breach of, inter alia, Section 4.19 of the 2007 Guidelines. Insofar as residential zoning is concerned, those Guidelines state, inter alia, that: "*(i) Zoning should extend out from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (ie 'leapfrogging' to more remote areas should be avoided)*". In the manner explained earlier in this judgment, the Notice Party took the view that the Applicant's lands were located contiguous to residential development and that development of same would "*therefore*" represent sequential development. That view does not address in any meaningful way part (i) of the 2007 Guidelines. The Notice Party simply did not engage directly with the requirements of part (i) of the 2007 Guidelines and this is evidenced by the complete absence of reasons as to why part (i) was allegedly complied with, insofar as the Notice Party was concerned. It is also a fact that no reasons were provided as to why, in the

view of the elected members, a departure from the principle set out in part (i) was justified. It will be recalled that the Notice Party took the view that there was *no* departure from the Sequential Development principle, so it is perhaps unsurprising that no reasons were set out by the elected members to justify departure from same.

Furthermore, the proposition that "*The residential element of the zoning objective is contiguous to established residential development and therefore represents sequential development in accordance with proper planning and sustainable development*" (which wording appears in the document entitled "Key Planning Arguments in Favour of Amendment No.20", which was stated to be "Appendix 1" to the Minutes of the 9 March 2016 meeting) also ignores part (ii) of section 4.19 of the 2007 Guidelines which states: "*(ii) A strong emphasis should be placed on encouraging infill opportunities and better use of underutilised lands*". The foregoing principle was not engaged with by the elected members and there were no reasons put forward to explain why part (ii) of the 2007 Guidelines was, in the view of the elected members, satisfied. In essence, the elected members seem to have taken the view that, because one single element of Section 4.19 of the 2007 Guidelines was, in their view, complied with (namely part (iii)), this necessarily meant full compliance. I am satisfied that this was not so. In the manner explained earlier in this judgment, section 4.19 comprises a set of "*principles*" (plural), departure from which was permissible only in exceptional circumstances and such exceptions should be clearly justified by local circumstances and set out in the Development Plan. No reasons for departure were set out.

244. In my view, it would be entirely unfair to characterise the Respondent's attitude as being one of demanding slavish adherence to a submission with regard to the sequential approach to development. One can conceive of a situation where the facts would demonstrate that a local authority had taken sufficient account of submissions made by the Minister, yet reached different decisions. For example, it was open to the elected members on 9 March, 2016 to disagree with the Minister's submission that development of 30 acres of the Applicant's lands would breach the concept of the sequential approach to development as set out in the 2007 Guidelines and as reflected in the contents of the County Development Plan and it was open to the elected members to zone those lands for development. But to do the foregoing lawfully would have required at least the following in my view (i) adequate reasons, engaging with the entirety of the contents of s. 4.19 of the 2007 Guidelines (and with s. 3.4.6 on p. 37 of the KCDP, 2011-17 which explains what is required by the Sequential Approach to development and mandates compliance) would need to have been set out, such that the justification, with reference to local circumstances, was clear as to why, *inter alia*, available land which was not closest to the core and public transport routes was being zoned for residential development and why this was being prioritised over infill opportunities etc; (ii) the foregoing justification should have been set out in the written statement of the local area plan; (iii) in circumstances where the parent County Development Plan contains clear, objective and specific targets for the development of housing units in respect of Sallins, with which the Local Area Plan is required to be consistent, the elected representatives would also need to have excluded from what was then the pre-approved or draft development plan, a volume of land,

originally intended for residential development, equivalent to the housing unit potential of the Applicant's lands.

The facts in the present case are entirely different. There was no adequate explanation for the departure from the sequential approach to development and the adoption of material alteration 20, in addition to the already more than sufficient quantum of developable residential land, illustrated, in my view, failure to take sufficient account of the Minister's submissions. If it can be said that the planning authority had regard to the 2007 Guidelines, it cannot be said, in my view, that the planning authority took *sufficient* account of the Minister's submissions regarding the 2007 Guidelines insofar as those submissions concerned the sequential approach to zoning and development. Section 31 requires that the Minister be of "*the opinion*" that the planning authority has ignored or has not taken sufficient account of his submissions in order, lawfully, to issue a direction. In the manner explained above, I am satisfied that, firstly, the Local Authority failed to take *sufficient* account of the Minister's submission regarding the 2007 Guidelines that the adoption of a LAP for Sallins which included Material Alteration 20 would constitute a breach of the Sequential Approach to development and, secondly, the Minister was entitled to form that opinion in light of the material which was before him in advance of taking the decision to issue the Direction which the Applicant seeks to impugn in this case. The opinion to which the Minister came was neither unreasonable nor irrational. In short, the evidence demonstrates that the elected members of the Notice Party failed to take sufficient account of the Minister's submission. That this was so represented the consensus of those who provided information and advice to the Respondent Minister in the wake of the adoption by the Notice Party of the Sallins LAP incorporating MA 20. I am satisfied that on the basis of the material before the Respondent, he was entitled, reasonably, to form the opinion that the Notice Party had not taken sufficient account of his submission insofar as the submission related to the 2007 Guidelines (specifically the concept of *Sequential Approach* to development in s. 4.19 thereof), thereby triggering the Respondent's entitlement, under S. 31 (1) (a) to issue the Direction. This was a third basis for the Direction which was validly issued by the Respondent.

Conclusion

245. An analysis of the evidence in this case does not support the Applicant's contention that the Respondent relied on any error when issuing his Direction and that same is vitiated by error. Having carefully considered the evidence I am unable to hold that the Minister was given erroneous information upon which he relied when issuing the Direction challenged. Nor does the evidence support that the Minister erred in law. The reasons for the Minister's direction are clear, cogent and comprehensive. It is uncontroversial to say that reasons for a decision may be set out in a diverse range of documents but one need go no further than the 8 August 2006 letter by the Respondent enclosing the Direction itself and accompanying statement of reasons with maps attached, to see sufficient reasons, capable of being understood by any person affected by the Direction as an explanation for why the decision was made. The jurisprudence in relation to the duty to give reasons is well known and, in my view, the reasons provided by the Respondent more than meet the

requirements set out by the Supreme Court in *Connelly v. An Bord Pleanála* [2018] IESC 31.

246. During the course of submissions on behalf of the Applicant, a picture was painted of the Respondent ignoring the views of local people in Sallins and of the elected representatives championing such views, the result being an unlawful Direction. The foregoing characterisation is wholly unfair on the evidence as found. It also ignores the very nature of a County Development Plan which Ms. Justice Baker described, in *Brophy v. An Bord Pleanála* [2015] IEHC 433 as containing a "solemn and common public contract". In the foregoing case, the Court considered that, in the case of a conflict between general provisions contained in relevant guidelines and a specific provision contained in a planning policy, the latter must prevail. Of the nature of a Development Plan, Baker J. commented, *inter alia*, on:

"...the solemnity of the document, and the requirement of the common good that the contract, once it has been adopted for the common good carries with it an obligation on the part of the planning authority to implement its statutory functions in accordance with that plan..."

247. The decision by the Respondent in the present proceedings was, it is clear from the evidence, made in order to preserve the integrity of the County Development Plan, in furtherance of the common good. Regardless of how *bona fide* and sincerely held were the views of the elected members on 9 March 2016, it does not follow that the views of the local Sallins community represents what is in the common good. The common good is served by an adherence to Statutory requirements including, *inter alia*, s.19(2), s.20(3)(r), s.28 and s.31 of the 2000 Act.

248. Despite the undoubted skill with which the Applicant's case was presented, the evidence in this case simply does not support the assertions made by the Applicant. The Direction dated 8 August 2016 is consistent with s.31 of the 2000 Act and valid, having regard to both s.31(1)(a) and s. 31(1)(c).

249. For the reasons set out in this judgment, the Applicant is not entitled to any of the reliefs sought.