THE HIGH COURT

[2021] IEHC 532

[2019 No. 810 JR]

IN THE MATTER OF SECTIONS 50 AND 50A OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

BETWEEN

ALUN OWENS

APPLICANT

– AND –

AN BORD PLEANÁLA

RESPONDENT

– AND –

WICKLOW COUNTY COUNCIL

NOTICE PARTY

SUMMARY

This is a successful application for an order quashing a decision of An Bord Pleanála made on 23rd September 2019 refusing Mr Owens planning permission for the construction of a new dwelling house, wastewater treatment

system and all associated ancillary works necessary to facilitate the development of 'Easthill Organic Farm'. This summary forms part of the court's judgment.

JUDGMENT of Mr Justice Max Barrett delivered on 27th July 2021.

1. Mr Owens has qualified and worked as an organic farmer. He owns about 4.1 acres of land in Co Wicklow, close by Newtownmountkennedy, and farms 1.5 acres of them as 'Easthill Organic Farm'. The first question the court asked at the hearing was whether it was actually possible to turn a profit by working 1.5 acres of land. It turns out that it is eminently possible to do so when it comes to intensive organic farming.

2. Mr Owens and his parents purchased the 4.1 acres back in 2008. Mr Owens also rents 2.72 acres of land adjacent to his lands. So, all in all he has about 6.82 acres available to him. His own lands are accessible via an existing entrance that was previously upgraded pursuant to planning permission which included permission for certain infrastructural upgrades associated with his organic farm.

3. The area of lands farmed by Mr Owens is considered by Teagasc to be sufficient for a viable organic farm. Proximity to an organic farming enterprise has also been confirmed by Teagasc to be essential for Mr Owens to facilitate 24-hour monitoring of his plants, his plastic tunnels, his equipment, and to guard against trespassers.

4. Mr Owens has come to court to challenge a decision by An Bord Pleanála to refuse him planning permission to erect a dwelling-house on a site on his landholding adjacent to the farm.

5. Mr Owens previously made a number of planning applications in respect of the site that is at the heart of these proceedings, including one in 2017 for the construction of a dwelling-house at the same location on a bigger site of 0.6 acres. This was the subject of a decision to grant planning permission by Wicklow County Council, with the Council accepting that Mr Owens came within the scope of Objective HD23 of the Council's Development Plan for 2016-

22.[1] Notably, the Director of Services at Wicklow County Council accepts that the organic farm is a viable enterprise and not simply an excuse to secure planning permission and that Mr Owens needs to be on-site as the farm operator.

6. The Council's decision on the 2017 planning application was the subject of a third-party appeal. On 30th November 2017, An Bord Pleanála decided to refuse planning permission. The reasons provided by An Bord Pleanála were the following:

> "*(i) The site of the proposed development is located within an 'Area under Strong Urban Influence' as set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April 2005. It is an area where housing is restricted to persons demonstrating social and economic local need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the "Sustainable Rural Guidelines*

[1] So far as relevant to the within proceedings this provides as follows: "*Residential development will be considered in the open countryside only when it is for those with a definable* ***social or economic need*** *to live in the countryside. Residential development will be considered in the countryside in the following circumstances: 1. A permanent native resident seeking to build a house for his/her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least ten years in total (including permanent native residents of levels 8 and 9) or resided in the rural area for at least ten years in total prior to the application for planning permission….5. A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support fulltime or significant part-time occupation….7. A person whose principal occupation is in a rural resourced based activity (i.e. agriculture, forestry, mariculture, agritourism, etc) can demonstrate a need to live in a rural area in order to carry out their occupation. The planning authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement….11. Persons whose work is intrinsically linked to the rural area and who can prove a definable* ***social or economic need*** *to live in the rural area….14. A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full-time….16. Persons who are permanent native residents of a rural area but due to the expansion of an adjacent town/village, the family home place is now located within the development/boundary of the town/village. In the event of conflict of any other settlement strategy objective/landscape zones categories, a person who qualifies under Policy HD23 their needs shall be supreme*" [Emphasis added]. In passing, while the court notes the observation in *C O'C v. An Bord Pleanála* [2021] IEHC 70, at para.20, that merits are not a matter for the court, the difficulty that presents for An Bord Pleanála in this regard is that this case concerns not so much the nature of the assessment undertaken by the Board in respect of Objective HD23 but rather the fact that it is impossible in the reasoning given to understand properly/fully what the reasons were.

for Planning Authorities" and to the proper planning and sustainable development of the area.

(ii) *Having regard to the small size of the farming plot, compounded by the subsequent significant reduction in the area left for farming purposes after the omission of the site for the proposed house, it is considered that the proposed development, the precedent which the grant of permission for it would set for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity of Newtownmountkennedy and would, therefore, constitute development which would be contrary to the proper planning and sustainable development of the area.*"

7. On 1st November 2018, Mr Owens submitted a planning application to the Council to construct a new farm dwelling and waste-water treatment system on the SE corner of his landholding on a site measuring .35 acres. This planning application (which has led ultimately to the within proceedings) sought to address concerns raised by An Bord Pleanála in the 2017 planning application concerning Mr Owens' rural generated housing need and his need to live on his farm, the viability of Mr Owens' farming enterprise, and precedent. The application was accompanied by a planning report prepared by Simon Clear & Associates which indicated that, on the facts presenting, Mr Owens had a genuine rural generated housing need and was in compliance with relevant national policies and guidelines and Wicklow County Council's 2016-22 Development Plan.

8. The planning application also included a brief report signed by Mr Alexander of Teagasc which is worth quoting in full as it touches on various key points that Mr Owen sought to bring home in his planning application and which were also mentioned in court during the hearing of the within application. Thus, per Mr Alexander:

"*I would like to make the following points with reference to Alun Owens' application for planning permission at Easthill….*

* *Given that Alun is growing high value organic crops on 1.5 acres of land with access to a further 5.5 acres, I would have no hesitation in stating that he will earn a livelihood from the holding at Easthill.*
* *This is particularly the case as he is growing partly under protection where several crops per year are possible. I note that five polythene tunnels are on site with planning permission to convert the existing 600m^2 to 1000m^2.*
* *A horticultural enterprise is the only way for a farmer or grower to make a living on a small area. To support this assertion I reference an article from a recent edition of* Today's Farm *(Teagasc publication) in which an organic producer in Co. Cork is shown to generate a turnover of €90,000 from 5 acres of production – salad bags, rocket, kale and spinach. Costs are approx.. €15,000 for variable and fixed costs. Please see attachment.*
* *Alun has been a member of Organic Trust since 2012. You cannot set up in organic production without training and he has a Level 5 certificate in organic production from the Organic College, Drumcollogher, Co Limerick and has also completed a NOTS training course in market gardening.* [When the court asked at the hearing whether this did not place Mr Owens in a rather special category of person – the rest of the nation cannot decide tomorrow that they are now going to move into organic farming, counsel for the Board tied this back to the issue of viability. Having reflected on the matter, the court respectfully considers that Mr Owens' particular qualifications and experience are not just an issue of viability but also count towards the issue of precedent].
* *He has obtained grant aid for tunnels, packhouse and a water harvest and storage unit from the Department of Agriculture under the* Organic Capital Investment Scheme.

* *He has developed local markets for his produce and being located close to Dublin is ideally placed to develop further markets in the future.*
* *The soil type in the farm is ideally suited to intensive horticultural production.*
* *Although Alun lives close-by in rented accommodation there is no guarantee that this arrangement will continue into the future.* [In fact, as will be seen, *inter alia*, the unsuitability of the rented accommodation for Mr Owens' growing young family has required him to quit this rented accommodation]. *Hence I would consider it essential for him to reside on the holding to ensure security of his crops, tunnels and equipment.* [At the hearing of the application, the Board sought to characterise this as an observation of security in which Teagasc is not expert. The court sees it as a comment on how a farm may effectively and efficiently be operated, matters on which Tegasc is undoubtedly expert.]
* *The most ground that a home on the site will occupy is 0.5 acres which leaves plenty of room for expansion of his growing operation. He is currently growing on 1.5 acres and the business has shown a steady and sustainable growth in sales since inception.*
* *All of the above points indicate to me that Alun is serious about making this organic growing enterprise into a profitable commercial unit. He is now a Teagasc client and I look forward to working alongside him to develop his horticultural organic growing business.*"

9. In this latest application, Mr Owens sought to address specific issues raised by An Bord Pleanála's planning application through the clarification of certain facts and the provision of expert opinion aiming to demonstrate, *inter alia*, that: (i) Mr Owens' farm is not only viable but is capable of providing him and his family with an income well in excess of the national farm average; (ii) the size of the farm is ideally suited to the type of farming engaged in by him, which is high value and requires smaller land requirements (a point backed up by Teagasc

expert opinion); (iii) the issue of the size of the landholding being too small is an argument that does not stand up to scrutiny, again as confirmed by Teagasc expert opinion; (iv) rural generated housing should be accommodated when it arises and that Mr Owens satisfied a demonstrable need in this regard by reference to Objective HD23 in the Council's 2016-22 Development Plan; and (v) Mr Owens' housing need was based on agricultural enterprise at the location, *i.e.* that what is in issue is not urban-generated development.

10. On 16th April 2019, the Council decided to refuse permission for the development for the following reasons and considerations, which were essentially identical to the reasons for refusal offered by An Bord Pleanála under the 2017 planning application, and notwithstanding the Council's previous conclusions. Mr Owens appealed the council's decision to An Bord Pleanála. The inspector appointed by An Bord Pleanála to consider the planning application delivered a report of 11th September 2019 in which he recommended refusal of the planning application. By order of 23rd September 2019, An Bord Pleanála refused the planning permission, offering the following reasons for its decision:

> "*1.* *Having regard to the location of the site within an area under strong urban influence as identified in the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating a local need in accordance with the Wicklow County Development Plan 2016-22 and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as the current case which states that it is the policy to 'facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area…having regard to the viability of smaller towns and rural settlements'. It is considered that the applicant has not demonstrated that he comes within the scope of the housing need criteria as set out in the Guidelines or in*

accordance with the County Development Plan for a house at this location in the open countryside, and that he has not demonstrated an economic or social need to live in this rural area in accordance with national policy and the current County Development Plan. Furthermore, the Board is not satisfied that the applicant's housing needs could not be satisfactorily met in an established smaller town/village/settlement/centre. The proposed development, in the absence of any definable or demonstrable need for the house in this rural area, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to these Ministerial Guidelines, to the provisions of the County Development Plan, to national policy, and contrary to the proper planning and sustainable development of the area.

2. *Having regard to the small size of the farming plot, compounded by the subsequent significant reduction in the area left for farming purposes after the omission of the site for the proposed house, it is considered that the proposed development, by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity of Newtownmountkennedy and would, therefore, constitute development which would be contrary to the proper planning and sustainable development of the area*".

11. It is this order of 23rd September 2019 that Mr Owens seeks to challenge. By notice of motion dated 15th November 2019, he seeks, *inter alia*, the following reliefs:

"*(i)* *An order of* certiorari *quashing a decision of the Respondent made on 23rd September 2019 to refuse him planning permission….*

(ii) *A declaration that the decision of the Respondent referred to at paragraph (i)…is irrational and of no effect.*

(iii) *A declaration that the said decision…is* ultra vires *and in breach of the Respondent's statutory duty under s.34(10) of the Planning and Development Act 2000 (as amended) to state the main reasons and considerations[2] on which the decision is based and/or is contrary to constitutional and/or natural justice and/or based on irrelevant considerations.*

(iv) *Consequent upon the relief at paragraph (i), an order remitting the said planning application to the Respondent for further consideration.*"

12. In passing, the court notes that while it is important that a court should understand the context of a case and the issues arising, a judicial review does not involve a re-investigation of the merits of the matters to which an impugned decision relates; it did seem to the court at points in the hearing that it was being invited to re-visit the merits of the Board's decision; this the court has declined to do in the within judgment. It seemed also to the court that at points the Board's contentions went beyond identifying where reasons were to be found and involved the provision of post-decision reasoning which, of course is not possible. The court respectfully does not mean to comment in this regard upon the most expert and professional manner in which the case was argued by both sides; it means merely to indicate why this judgment focuses on the impugned decision/reasoning and whether that decision/reasoning is vulnerable as a matter of administrative law, rather than exploring the merits of Mr Owens'

[2] Section 34(10)(a) of the PADA 2000, as amended, provides as follows:

> "*Subject to paragraph (c) and without prejudice to section 172(1l) , a decision given under this section or section 37 and the notification of the decision shall state the main reasons and considerations on which the decision is based, and where conditions are imposed in relation to the grant of any permission the decision shall state the main reasons for the imposition of any such conditions, provided that where a condition imposed is a condition described in subsection (4), a reference to the paragraph of subsection (4) in which the condition is described shall be sufficient to meet the requirements of this subsection.*"

planning application or treating with reasons that do not feature in the impugned decision/reasoning.

13. In reaching its judgment the court has respectfully not had regard to the evidence of Mr Sean Owens (Mr Owens' father) as his affidavit deals with matters that were not before the Board when it made its decision. Nor has the court had regard to the second affidavit of Mr Owens' architect which does not really offer evidence but rather engages in commentary/submissions that are eminently fine as submissions but just not appropriately addressed by affidavit.

14. The court sees a number of difficulties (the 'Identified Difficulties' and each an 'Identified Difficulty') to present with the decision/reasoning of An Bord Pleanála (whether as identified in the Board order, coupled with the inspector's report, or even when viewed in the context of the previous applications made by Mr Owens in respect of his landholding):

(1) neither the Board decision nor the inspector's report engage in a detailed appraisal by reference to Objective HD23 whether Mr Owens meets the social or economic needs test. In this regard, the court recalls the following observation of O'Donnell J. in *Balz v. An Bord Pleanála* [2019] IESC 90, para.57:

> "*It is a basic element of any decision-making affecting the public that relevant submissions should be addressed and an explanation given as to why they are not accepted, if indeed that is the case. This is fundamental not just of the law but also to the trust which members of the public are required to have in decision making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may profoundly disagree, and with those consequences they may have to live*".

When it comes to the just-quoted text, the court notes with respectful approval the following observations of counsel for Mr Owens in his written submissions:

> "*These comments* [*i.e.* the comments made in *Balz* that are quoted above]*…are particularly apposite in the present case, because the Board and its inspector, having identified the issue of whether the Applicant met the test of social or economic need as being the central issue in the application, just ignored the Applicant's evidence in that regard by reference to the multiple criteria he said he satisfied in Objective HD23 and merely concluded that he did not satisfy the requirements of that objective*".

(2) the planning inspector's conclusion that Mr Owens did not meet the economic needs test simply flies in the face of all the evidence that was before him in this regard; that does not mean that Mr Owens was consequently entitled to planning permission – nor does he contend that he is entitled as of right to the planning permission sought – but it is a notable flaw in the reasoning.

(3) unexplained is how, when Mr Owens can display compliance with several of the criteria listed in Objective HD23 he can be found (and of course he *can* be found but it needs to be explained how he could be found) not to demonstrate a social or economic need. Again, the foregoing does not mean that had matters properly been addressed Mr Owens would have been entitled to planning permission, but it is a notable flaw in the reasoning.

(4) there is a failure to comply with section 34(10) of the PADA 2000 in that, by virtue of the flaws identified herein, it does not give any adequate insight into the conclusion of An Bord Pleanála why Mr Owens did not have a genuine rural housing need based on social or economic criteria by reference to Objective HD23.

(5) the inspector appears to have considered that the address of Mr Owens' place of upbringing is a relevant consideration in relation to Mr Owens' current application. (There also appears to be a sense, though the court may be wrong in this, that 'Lowlands', the name of the home of Mr Owens' parents home, was understood by the Board/inspector to be a townland; the relevant townland is Killadreenan).

(6) while the inspector addressed the size of Mr Owens' landholding he does not address the question of viability of such a landholding in the context of the particular farming activity (intensive organic farming) done by Mr Owens; in truth, the decision at no point engages with the evidence as to farm size that was proffered by Mr Owens.

(7) what the decision appears to do when it comes to size/viability is set a quantitative threshold for viability without reasoning through the application of same. (As noted at the hearing, this would have the effect that small holding organic farmers – with organic farming being, it seems, at the cusp of innovative farming methods in Ireland – would struggle ever to gain permission to live onsite; this may raise a policy issue for the Executive/planners as to how this form of farming is to be reconciled with the valid concern to avoid over-development of the countryside. Fortunately, however, the court does not have to resolve policy issues; it merely has to focus on the impugned decision/reasoning, and a flaw in that decision is that it appears to set a quantitative threshold for viability without reasoning through the application of same).

(8) the reasoning fails to acknowledge the particular need for proximity to a site of organic farming that an organic farmer requires because of the particular demands of this type of farming (as evidenced by Mr Alexander).

(9) there is a failure to engage properly with the additional evidence (most notably perhaps the evidence of Mr Alexander) that was placed before the inspector/Board in the latest planning application as opposed to previous planning applications.

(10) it is not at all clear how the Board could have concluded that the reduction of Mr Owens' landholding, through some of it being used for his new residence, would yield a significant reduction of the area left for farming when the expert evidence from Teagasc was directly contrary, being that the proposed house "*leaves plenty of room for expansion of his* [Mr Owens'] *growing operation*".

15. When it comes to the giving of reasons for administrative decisions, despite the fact that the court was referred to a number of cases by the parties, the decision of the Supreme Court in *Connelly v. An Bord Pleanála* [2018] 2 I.L.R.M. 453 is key. As counsel for Mr Owens succinctly observed, invoking a colloquialism in this regard, at the hearing of this application, and there seemed to be common accord in this regard, so far as the law at this time on the giving of reasons by an administrative decisionmaker is concerned, *Connelly* is "*where it's at*".

16. If the Supreme Court goes to the time and trouble, as it did in *Connelly*, to set out a comprehensive series of guidelines on a particular area of the law it seems to the court that (a) as a matter of precedent, (b) out of general respect for the Supreme Court as an apex court, and (c) to avoid jurisprudential sprawl in argument/judgments whereby a trial judge is compelled to look at multifarious decisions that ultimately represent but an application of the *Connelly* guidelines without much ado, then unless another case (i) involves some new departure by the Supreme Court from what is stated in those guidelines (when it comes to *Connelly* there is no such case at this time), (ii) involves a Superior Court deciding some novel point that was not anticipated/covered by the Supreme Court in its guidelines (the court has

not been referred to any such judgment), or (iii) for some other reason, a judgment that has issued from a Superior Court has a critical bearing on the case at hand (the court has not been referred to any such judgment so far as the giving of reasons is concerned), then a case should be determined primarily by reference to the applicable Supreme Court guidelines, here the guidelines in *Connolly*.

17. The law need not unfailingly be an exercise in complexity; and there comes a point at which past precedent is a superfluity in light of later consolidations of principle, as occurred in *Connelly*. Thus, while the court has considered, *inter alia*, *FP v. Minister for Justice, Equality and Law Reform* [2002] 1 I.L.R.M. 16, *Mulholland v. An Bord Pleanála (No 2)* [2006] 1 I.R. 453, *Grealish v. An Bord Pleanála* [2007] 2 I.R. 536, and *Craig v. An Bord Pleanála* [2013] IEHC 402, all cases that precede *Connelly*, it sees no reason why *Connelly* simpliciter – eloquently described in *Crekav Limited v. An Bord Pleanála* [2020] IEHC 400, at para.187, as "*the touchstone by reference to which adequacy of …reasons…must be assessed*" – ought not to determine the reasons-based contentions made by the parties here in respect of the impugned Board decision.

18. One challenge when it comes to *Connelly* is that the judgment of the Chief Justice, though enlightening, necessarily cross-refers into the detail of the actual case that was before the Supreme Court in *Connelly*. Is it possible to distil from the Chief Justice's observations a series of principles uncluttered by the specifics of *Connelly*? It is worth a try.

19. It seems to the court that the following key principles can be identified in the judgment of the Chief Justice in *Connelly*, some of them overlapping:

> [1] The law on reasons does not require that a reviewing court agrees with the reasons given (para.10.14).
>
> [2] In a challenge based on allegedly inadequate reasoning, the law only entitles an interested party to know what the reasons were (para.10.14).
>
> [3] It is more likely that a decision will be open to successful challenge because reasons are not given rather than because they are (para.10.2) .

[4] The type of reasons which may be necessary will depend, amongst other things, on the type of decision which is being made and the legal requirements which must be met in order for a sustainable decision of that type to be reached (para.5.3).

[5] The requirement to give reasons is not intended to, and cannot be met by, a form of box ticking (para. 5.4).

[6] Decision makers are normally afforded a significant margin of appreciation within the parameters of the legal framework within which a particular decision has to be taken (para.10.2).

[7] It will rarely be sufficient to set out, in almost standard form, a generic description of the legal test or principles by reference to which the decision is to be made, to state that that test has been applied, and simply to go on to say that a particular decision has been made (para.10.1).

[8] While it has often been said that a decision maker is not required to give a discursive determination along the lines of what might be expected in a superior court judgment, it is equally true that the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other (para.10.1).

[9] There is a middle ground between (a) the sort of broad discursive consideration which might be found in the judgment of a court, and (b) an entirely perfunctory statement that, having regard to a series of factors taken into account, the decision goes one way or the other. There is at least an obligation on the part of decision makers to move into that middle ground, although precisely how far will depend on the nature of the questions which the decision maker had to answer before coming to a conclusion (para.10.3).

[10] All relevant factors must be taken into account and all irrelevant factors must be excluded from consideration (para.5.4).

[11] A decision should usefully identify the factors taken into account so that an assessment can be made, if necessary, by a

court in which the decision is challenged, as to whether those requirements were met (para.5.4).

[12] It will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other (para.5.4).

[13] Courts will not second guess sustainable conclusions of fact (para.10.2).

[14] Many decisions involve the exercise of a broad judgment and here again the courts will not second guess the decision maker on whom the law has conferred the power to make the decision in question (para.10.2).

[15] What may lead to a successful challenge is if a court concludes that it is not possible either for interested parties or, indeed, the court itself, to know why the decision fell the way it did (para.10.2).

[16] It is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker: (i) any person affected by a decision is at least entitled to know in general terms why the decision was made; (ii) a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision (para.6.15).

[17] The reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review (para.6.15).

[18] The applications of points [16] and [17] will vary greatly from case to case, depending on the form of decision, or decision making process (para.6.16).

[19] Reasons must be capable of being determined with some degree of precision (para.7.3).

[20] The reasons for a decision may be derived in a variety of ways, either from a range of documents or from the context of the decision, or in some other fashion. However, as is clear from the above analysis, this is always subject to the requirement

that the reasons must actually be ascertainable and capable of being determined (para.7.5). As to context, the court notes that the recent decision in *Damer v. An Bord Pleanála* [2019] IEHC 505 makes clear that part of the context in which a decision is taken is its planning history.

[21] Reasons may be found anywhere, provided that it is sufficiently clear to a reasonable observer carrying out a reasonable enquiry that the matters contended actually formed part of the reasoning; if the search required were to be excessive then the reasons could not be said to be reasonably clear (para.9.2).

[22] Where it is suggested that the reasons can be found in materials outside both of the decision itself together with materials expressly referred to in the decision, then care needs to be taken to ensure that any person affected by the decision in question can readily determine what the reasons are notwithstanding the fact that those reasons do not appear in the decision itself or in materials expressly referred to in the decision (para.7.5).

[23] Any document recording the reasons must be such that it is possible to say that the document concerned actually represents the reasons for the decision in question in a way which ought not be capable of real debate (para.7.3).

[24] The requirement of reasonable certainty as to reasons necessitates that any documentation said to represent the reasons must be either expressly referred to in the decision document or be, by necessary implication, clearly adopted by the decision document (para.7.3).

[25] The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be

situations where the reasons for the decision are obvious and that effective judicial review is not precluded (para.7.4).

[26] The ability of a person who was not involved in the process, but who is nonetheless entitled to challenge the decision, to identify the reasons for a decision, where those reasons are to be derived from a diffuse range of sources, will differ greatly from the ability of a person who was involved in the process to do so (para.7.6).

[27] In the context of a decision of An Bord Pleanála, (a) it would be preferable in all cases if the Board made expressly clear whether it accepts all of the findings of an inspector or, if not so doing, where and in what respect it differs. It may be possible, in certain circumstances, to reach a significantly clear inference as to what the Board thought in that regard but it would be better if the matter were put beyond inference and were expressly stated (para.9.6); (b) where the Board differs from its inspector then there is clearly an obligation for the Board to set out the reasons for coming to that conclusion in sufficient detail to enable a person to know why the Board differed from the inspector and also to assess whether there was any basis for suggesting that the Board's decision is thereby not sustainable (para.9.7).

20. The court turns now to bring the above principles to bear in the specific context of the application at hand.

21. [1]The law on reasons does not require that a reviewing court agrees with the reasons given.

22. Noted. The court has and offers no views in this regard.

23. [2]In a challenge based on allegedly inadequate reasoning, the law only entitles an interested party to know what the reasons were.

24. When it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is.

25. [3] It is more likely that a decision will be open to successful challenge because reasons are not given rather than because they are.

26. Noted. Here reasons have been given.

27. [4] The type of reasons which may be necessary will depend, amongst other things, on the type of decision which is being made and the legal requirements which must be met in order for a sustainable decision of that type to be reached (para.5.3).

28. Noted. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

29. [5] The requirement to give reasons is not intended to, and cannot be met by, a form of box ticking.

30. Noted.

31. [6] Decision makers are normally afforded a significant margin of appreciation within the parameters of the legal framework within which a particular decision has to be taken.

32. The court has proceeded accordingly. However, the Identified Difficulties, especially Nos.(1)-(4) and (6)-(10) present a severe difficulty in that when it comes to those Identified Difficulties it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

33. [7] It will rarely be sufficient to set out, in almost standard form, a generic description of the legal test or principles by reference to which the decision is to be made, to state that that test has been applied, and simply to go on to say that a particular decision has been made.

34. Although the Board has not proceeded in this manner, nonetheless Identified Difficulties (1)-(3) present as an issue in this regard, given the want of engagement with Objective HD23 touched upon in Identified Difficulty (1) and the difficulties touched upon in Identified Difficulties (2) and (3).

35. [8] While it has often been said that a decision maker is not required to give a discursive determination along the lines of what might be expected in a superior court judgment, it is equally true that the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other.

36. When used in this context the word "*anodyne*", per the online *Oxford English Dictionary*, means "*innocuous, inoffensive, vapid, bland*". The court does not see that this is the difficulty that presents here. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

37. [9] There is a middle ground between (a) the sort of broad discursive consideration which might be found in the judgment of a court, and (b) an entirely perfunctory statement that, having regard to a series of factors taken into account, the decision goes one way or the other. There is at least an obligation on the part of decision makers to move into that middle ground, although precisely how far will depend on the nature of the questions which the decision maker had to answer before coming to a conclusion.

38. Again, the court does not see that the difficulty here is one of discursiveness versus perfunctoriness. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

39. [10] All relevant factors must be taken into account and all irrelevant factors must be excluded from consideration.

40. Here Identified Difficulty (5) involves the taking of an irrelevant factor into account (albeit that it does not seem to the court that by itself this difficulty could not be overlooked). Subject to the foregoing, the more pressing difficulty that presents for the court is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

41. [11] A decision should usefully identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met.

42. Again, the pressing difficulty that presents for the court is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it, with the result that the court cannot properly determine whether all relevant factors were taken into account and all irrelevant factors excluded.

43. [12] It will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other.

44. The Board did not proceed so.

45. [13] Courts will not second guess sustainable conclusions of fact.

46. The court has not second-guessed any sustainable conclusions of fact.

47. [14] Many decisions involve the exercise of a broad judgment and here again the courts will not second guess the decision maker on whom the law has conferred the power to make the decision in question.

48. The court has not second-guessed the Board.

49. [15] What may lead to a successful challenge is if a court concludes that it is not possible either for interested parties or, indeed, the court itself, to know why the decision fell the way it did.

50. That is precisely the difficulty here: when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

51. [16] It is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker: (i) any person affected by a decision is at least entitled to know in general terms why the decision was made; (ii) a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision.

52. Neither (i) nor (ii) are entirely satisfied here: when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

53. [17] The reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review.

54. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

55. [18] The applications of points [16] and [17] will vary greatly from case to case, depending on the form of decision, or decision making process.

56. Noted.

57. [19] Reasons must be capable of being determined with some degree of precision.

58. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it.

59. [20] The reasons for a decision may be derived in a variety of ways, either from a range of documents or from the context of the decision, or in some other fashion. However, as is clear from the above analysis, this is always subject to the requirement that the reasons must actually be ascertainable and capable of being determined (para.7.5).

60. In approaching its judgment, the court has had regard to the decision/reasoning of An Bord Pleanála, as identified in the Board order, coupled with the inspector's report, all in the context of the previous applications made by Mr Owens and such information concerning same as has been placed before the court.

61. [21] Reasons may be found anywhere, provided that it is sufficiently clear to a reasonable observer carrying out a reasonable enquiry that the matters contended actually formed part of the reasoning; if the search required were to be excessive then the reasons could not be said to be reasonably clear.

62. See the court's response to point [20].

63. [22] Where it is suggested that the reasons can be found in materials outside both of the decision itself together with materials expressly referred to in the decision, then care needs to be taken to ensure that any person affected by the decision in question can readily determine what the reasons are notwithstanding the fact that those reasons do not appear in the decision itself or in materials expressly referred to in the decision.

64. The court does not see an issue to present in this regard in the within proceedings.

65. [23] Any document recording the reasons must be such that it is possible to say that the document concerned actually represents the reasons for the decision in question in a way which ought not be capable of real debate.

66. The court does not see an issue to present in this regard in the within proceedings.

67. [24] The requirement of reasonable certainty as to reasons necessitates that any documentation said to represent the reasons must be either expressly referred to in the decision document or be, by necessary implication, clearly adopted by the decision document.

68. The court does not see an issue to present in this regard in the within proceedings.

69. [25] The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.

70. Here the problem presenting is that when it comes to Identified Difficulties Nos.(1)-(4) and (6)-(10), it is not possible to understand from the Board's decision and the inspector's order, even when viewed in the context of the previous planning applications, what the reasoning of the Board is as regards key issues before it. The court does not see that there is any obviousness of reasoning presenting that might obviate this deficiency.

71. [26] The ability of a person who was not involved in the process, but who is nonetheless entitled to challenge the decision, to identify the reasons for a decision, where those reasons are to be derived from a diffuse range of sources, will differ greatly from the ability of a person who was involved in the process to do so.

72. Noted.

73. [27] In the context of a decision of An Bord Pleanála, (a) it would be preferable in all cases if the Board made expressly clear whether it accepts all of the findings of an inspector or, if not so doing, where and in what respect it differs. It may be possible, in certain circumstances, to reach a significantly clear inference as to what the Board thought in that regard but it would be better if the matter were put beyond inference and were expressly stated; (b) where the Board differs from its inspector then there is clearly an obligation for the Board to set out the reasons for coming to that conclusion in sufficient detail to enable a person to know why the Board differed from the inspector and also to assess whether there was any basis for suggesting that the Board's decision is thereby not sustainable.

74. The court does not see an issue to present in this regard in the within proceedings.

75. The court now turns briefly to consider an issue that, it was contended by the Board, was of relevance as to how the court might exercise its discretion in this should the court be of the view (and it is clearly of the view) that there are serious deficiencies in the impugned decision/reasoning. That issue is as follows. Mr Owens moved away from Easthill *after* making the planning application that is the focus of the within proceedings. (His parents have sought to keep things going since). Despite this move, Mr Owens' home address was not changed in the application materials. When it comes to the move, Mr Owens avers as follows:

> "*17.* *In the spring of 2018, there was an extremely cold snow event that lasted more than a week. We had been refused permission for our home* [in 2017] *and my wife was heavily pregnant with our fourth child. The Mews [the accommodation that the family was renting] did not have central heating, only two small wood-burning stoves, that it was impossible to keep fuelled. It was a struggle to keep any heat in the house. The walls, floors and ceiling had no insulation. We had a saying that you put on your coat to go into the house. This was no exaggeration. It was a cold house, and that March, when the snow lay on the ground, we struggled to keep the temperature above freezing indoors. I worked hard to keep the polytunnels from*

collapsing under the snow. This was a real low point in our loves and, as a family, it nearly broke us….

18. *We could not live like that any longer. We had moved into the Mews as we had believed in our business and our future. Despite the fact that the property was wholly inadequate for raising a young family, especially in Wintertime, we believed that residing there would not las long as we could prove the viability of the farm and would be moving into a newly constructed house in due course. We decided that we would not give up hope of our home on our farm, but neither could we put our lives on hold while others decided our fate. We could not put our children's health at risk by continuing where we were.*

19. *Our youngest daughter…was born in June 2018. We lodged a planning application at the beginning of November 2018 – this resulted ultimately in the decision now being challenged. We provided the Council with information concerning our urgent housing situation, submitted photographs, and explained our dire straits. The Council had granted permission in 2017 and we were really hopeful that with the new application and information that we had put forward, that they would support us again. We set about obtaining expert evidence and this, coupled with the fact that we had show the viability of the farm in the 2017 application, led us to believe that this application would be successful.*

20. *Around this time my wife…was offered a job promotion…which would involve her moving to a location in Offaly on a two-year contract. When we got the news through our local representatives that Wicklow County Council was not going to make a favourable decision on the planning application we were devastated, particularly as the Council had supported us previously. We were in a really difficult situation and simply couldn't face another*

winter in the Mews. With the prospect of a long and extended planning process and more uncertainty in our future we felt like we had no option but for [my wife]*...to take the job offer. This was an extremely difficult decision to make, but we felt we had no option.*

21. *If we had a home of our own on Easthill or permission for a home, I categorically say that we would not have moved away, because that move would have (and has had) a detrimental impact on our farm business. It is also fair to say that if we secured planning permission, we would build at Easthill.*

22. *We moved just before Christmas 2018. Initially we moved back into my childhood home in Kiladreenan with my parents whilst we sourced rented accommodation in* [Offaly]*...which we moved into a week before Christmas. We had been really clear with Wicklow* [County Council] *that we could not stay living where we were. It seemed that nobody was really concerned with where we lived, as long as it wasn't on the farm. We had been in rented accommodation for four years and it just wasn't sustainable – financially, personally or for the health of our family. One of the reasons we had moved there was to prove our commitment to the farm. We had done that, we had built up the farm and made a success of it, and the accounts showed that. We couldn't keep renting the Mews indef*initely, *it was not suitable to raise a family in, and it had become detrimental to our health. However, we still had access to the Mews to collect post…and some of our belongings were stored at the Mews for some time. In the middle of the school year we were left with no option but to move our whole life to another county, away from my family and parents, from our home, from our farm, from my rural community. The children had to say goodbye to their schoolfriends which was really traumatic for them. We had*

to buy new uniforms and find a new school and new place to live. I left the local U9's football team that I was coaching….It was a very unsettled time. The children had to start a new school and make new friends. We didn't know anyone in Offaly. We were trying to come to terms with the move, with [my wife]…starting a new job, with the kids starting new schools and with finding somewhere to live which, again, is rental accommodation.

23. *…This farm was my livelihood. I do not have other work. This was and is extremely upsetting for me personally, as well as damaging financially. Farming is hard work, and long hours from early morning until late evening. But it is work I enjoy and want to continue to do. I spent long happy days on the farm, working with my children around me. I simply wanted to continue to live there, in a home of our own (preferably a home that we could heat) and in my own community, where I grew up, and close to my parents as they became older.*

24. *My departure from Easthill has, to a large extent, confirmed the views set out by Stephen Alexander of Teagasc that an organic farm would be viable on the site, but that viability would be dependent on me living on the farm. To be clear, I am not travelling over and back from Offaly to operate the farm now, and it has declined since our move. The farm is still operating, more or less 'ticking over', thanks to the efforts of my parents. I do not have any income from the farm, as I am not there to manage and grow it as is needed, which, from my own experience, is essential to its success….*

26. *There was no attempt to mislead the Board in the appeal, by not indicating that we had ceased renting The Mews between the time of lodging the appeal. The failure to indicate that we had moved to Offaly was inadvertent. Indeed, if anything, information that we had moved and*

were no longer living beside the farm would have been highly relevant, because it would have confirmed that it is not possible to operate the farm business in a viable way without being onsite on a permanent basis."

76. While the Board appeared to accept at the hearing of this application that Mr Owens' non-notification of the change of address was inadvertent (and the inadvertence is entirely understandable in all the circumstances presenting (and as just described)), it pointed to the fact that, unknown to the inadvertent Mr Owens, his architect, by her own account in her affidavit evidence, seems to have taken a deliberate decision not to apprise the Board of this change. The Board contends that the court should factor the architect's actions into its considerations as to how to exercise its discretion. The court has done so but it seems to it that to hold against Mr Owens something that he did not do and does not appear to have known was done would be unfair, unjust, and disproportionate in all the circumstances presenting, the principal circumstance being the Board's considerably flawed decision/reasoning.

Conclusion

77. For the reasons stated above, the court will grant (i) an order of *certiorari* quashing the Board's decision of 23rd September 2019, (ii) a declaration that the said decision is in breach of the Board's statutory duty under s.34(10) of the PADA 2000 (as amended) to state the main reasons and considerations on which the decision is based, and (iii) an order remitting the planning application to the Board for fresh consideration.

78. It was contended that in the event that the court took the view that An Bord Pleanála had complied with its statutory duty in s.34(10)(a) of the PADA 2000, and the court does not see that it has, the apparent setting of a quantitative threshold for viability in the face of the evidence proffered as to viability (in the specific context of organic farming) was irrational. The court does not see that this ground of objection on its own terms now falls to be considered.

79. As this judgment is being delivered remotely, it may assist for the court to note that as Mr Owens has succeeded in the within application, offhand the court sees no reason why he should not be awarded his costs. If either Mr Owens or An Bord Pleanála disagree, they might kindly

let the court registrar or the court's judicial assistant know and the court will schedule a brief costs hearing thereafter. Any (if any) such hearing will now inevitably take place next term.