

THE HIGH COURT

[2021] IEHC 24

[Record No. 2019/393 JR]

BETWEEN

DONAL KENNY

APPLICANT

AND

ROSCOMMON COUNTY COUNCIL

RESPONDENT

AND

WESTMEATH COUNTY COUNCIL

NOTICE PARTY

JUDGMENT of Mr. Justice Barr delivered electronically on the 18th day of January, 2021.

Introduction

1. This is a contested leave application in which the applicant seeks leave to challenge variations made to the Roscommon County Development Plan 2014 – 2020 (hereinafter referred to as "RCDP") and to the Monksland/Bellanamullia Local Area Plan 2016 – 2022 (hereinafter referred to as "MBLAP 2016").
2. This application was moved by the applicant as a lay-litigant. In support of his application he has submitted no less than five affidavits (although the last affidavit primarily concerned the relisting of the matter), together with a very large volume of documentary exhibits. While he has a very large number of complaints in relation to a wide range of matters, it has been difficult for the court to discern what complaint the applicant has in relation to the variations that were made to the two plans. The applicant's main complaint in relation to the variations seems to be that the MBLAP 2016 was varied so as to "retrofit" the provisions of the Athlone Joint Retail Strategy (hereinafter referred to as "AJRS") into the County Development Plan and the Local Area Plan, so as to give them legal efficacy. His multiple complaints are set out in some detail later in the judgment.
3. In summary, the response on behalf of the respondent is that the application herein, while purporting to be an application in relation to the variations to the two plans, is in fact a collateral attack made by the applicant on the MBLAP 2016, due to the fact that in that plan certain of his lands were rezoned from "district centre" to "new residential" and a particular planning application was rejected by An Bord Pleanála on that account. It is submitted that the applicant is trying to attack the MBLAP 2016 by mounting an attack on the variations effected thereto in 2019, due to the fact that he is long out of time to challenge the MBLAP 2016.
4. It is further submitted that on the evidence contained in the affidavit sworn by Ms. Mary Grier, Senior Planner of the respondent on 10th January, 2020, there was absolutely no procedural irregularity or infirmity in the making of the variations to the two plans. On that basis, it was submitted that the applicant had not raised even an arguable case that the variations should be struck down, or that he was entitled to any of the reliefs sought in his statement of grounds.

Submissions on Behalf of the Applicant

5. As noted earlier, the applicant has submitted five substantial affidavits, together with a very large volume of documentary exhibits. In the course of those affidavits he makes numerous complaints in relation to the RCPB, the MBLAP 2016 and the decision reached by An Bord Pleanála in respect of a number of planning applications submitted by him.
6. In his affidavits, the applicant complains bitterly of the fact that he initially purchased land in the Bogganfin area of Athlone, Co. Roscommon, which was zoned as a "*district centre*" in the MBLAP 2010-2016. When he submitted a planning application for a development on those lands, it was refused on the basis that it was too remote. He then purchased other land, which had the same zoning, but in the Monksland area, which was approximately 6km from the centre of Athlone. He submitted a number of planning applications in respect of proposed development on those lands, but was also unsuccessful in respect of those applications. In particular, the final application that he lodged and which had been refused by the planning authority and was under appeal to An Bord Pleanála, was refused by them on the basis of the content of the draft MBLAP 2016, which the applicant maintains was changed after the date of that refusal in the final MBLAP 2016 as adopted by the respondent.
7. The applicant challenged the decision of An Bord Pleanála in relation to that refusal, which challenge was unsuccessful. It was the subject of a written judgment by McGrath J. in *Kenny v. An Bord Pleanála* [2020] IEHC 290. The history of the various planning applications submitted by the applicant is set out succinctly in that judgment.
8. It is clear from the affidavits, that the applicant is bitterly disappointed by the rezoning of his lands in MBLAP 2016 from "*district centre*" to "*new residential*" in respect of the Monksland lands and to "unzoned" in respect of the Bogganfin lands. Time and again, he complains that he was badly treated due to the fact that he invested in lands on the basis of the zoning of those lands as appearing in MBLAP 2010, only to have that zoning changed in MBLAP 2016. He criticises that change in zoning due to the fact that the district centre was moved only a very short distance away from his lands and onto lands which effectively incorporated what he alleged had been lands that had been illegally used as a quarry.
9. The applicant complains that the MBLAP 2016 constituted a plan in relation to proper land use in the area, which was put in place prior to the adoption of the joint retail strategy for the area. He stated that that did not make any sense. He made the case that the variations to the MBLAP 2016 were invalid, as they were essentially an attempt to "*retrofit*" the provisions of the AJRS into the RCDP and MBLAP 2016, when those plans ought not to have been adopted until the retail strategy was in place, because the strategy was supposed to inform the content of the County Development Plan and the Local Area Plan.
10. The applicant also criticises the content of MBLAP 2016 due to the fact that it was based on projections of population growth, which were shown to have been inaccurate having regard to the provisional results released by the Central Statistics Office in relation to population and population growth projections, as published in June 2014.

11. The applicant made it clear that he had not challenged MBLAP 2016 due to the fact that at the relevant time he had an appeal pending before An Bord Pleanála (hereinafter referred to as "ABP") in relation to a proposed development on the Monksland lands. He had raised issues in relation to the validity of the change in zoning contained in MBLAP 2016 in his appeal before ABP. He presumed that that body would see that the arguments that he had raised in relation to the invalidity of the rezoning contained in the MBLAP 2016 were correct and would make the necessary findings in that regard. When it did not do so, he had instituted judicial review proceedings in relation to the decision reached by ABP on his appeal.
12. The applicant accepted that he had made submissions in relation to MBLAP 2016, but alleged that the concerns expressed by him in his submission, had not been taken into consideration by the respondent when adopting the revised plan. He had also made submissions in relation to the proposed variation to MBLAP 2016, but he alleged that that too had not been taken into consideration.
13. The applicant further alleged that certain members of the committee, who represented Athlone Municipal District and who had adopted the variation to MBLAP 2016, had a conflict of interest when voting on the matter. In particular, he pointed to the fact that the chairman of that committee was an auctioneer, who had an extensive practice in the area.
14. While it is difficult to succinctly summarise the core argument made by the applicant in respect of the variations adopted to the RCDP and MBLAP 2016, perhaps the closest that the applicant came to stating his essential complaint was set out at para. 2 of the affidavit sworn by him on 7th July, 2019:-

"2. *The court is requested to evaluate the practicality and lawfulness of adding an addendum in the form of a supplemental strategy to a local area plan that was derived from false pretences, bogus reports and contraventions of process, in fact, a plan contravening the Planning Acts (ACT) and the Guidelines (RPGs) therein. Development plans are governed by the Planning and Development Acts 2000-2018, as amended. (See 2010 Act s.10(1b) and circulars) which marked with DK1 I have signed my name prior to swearing hereof (Appendix 1, 1A + 1B + 1C + 1D and s.28 as amended and Guidelines for Planning Authorities, June 2007 (PG 2007), development plans Guidelines, which marked with DK2 I have signed my name prior to swearing hereof (Appendix 2, 2A, 2B) circulars included, which deals specifically with development plans. It is submitted that the evidence outlined in this report will establish that the Monksland/Bellanamullia Local Area Plan 2016-2022, (M/BLAP 16/22) is formulated on a false agenda, with the sole rationale for the introduction of this new retail strategy being to afford credibility to a flawed local area plan. In fact, the process involves retrofitting validity to the LAP, in what may be determined as one flawed plan supporting another."*

15. The applicant also complained that the Regional Planning Guidelines 2012 had specifically named the respondent as a body that had to prepare a joint retail statement. However,

that had not been done in advance of the adoption of MBLAP 2016. It was only done following the recommendation of the Athlone Boundary Review Committee Report of November 2017, which recommended that a joint retail strategy should be drawn up by the respondent and the notice party. They had then adopted the Athlone Joint Regional Strategy on 29th April, 2019, some three years after the adoption of MBLAP 2016. Thus, it was submitted that the adoption of MBLAP 2016 had been unlawful, due to the fact that it had been adopted in the absence of any retail strategy in place.

16. The applicant also maintained that the AJRS was a flawed document and that the manner of its adoption was also flawed. In his fourth affidavit sworn on 25th August, 2020, he stated that the AJRS failed to assess active retail development in the area, or the history of retail in the planning files. He stated that the strategy had been prepared as an ad hoc supplement to patch a defect in MBLAP 2016 and did not remedy the flaw.
17. He further alleged that the AJRS was a flawed document, which had been created solely to circumvent the irregularity of the legal requirements of MBLAP 2016, which was a plan, the sole function of which was a manipulation of retail development. Its principal attribute was alleged to be the extension of lucrative trading platforms, irregular zoning, and the complement to speculators agendas. It was alleged that the plan had no consideration of the impacts on residential development; no consideration of the access or transport management plan and no consideration of cohesion with adjoining planning authorities. He stated that Athlone Town Council had expressed its concern in relation to the excessive retail platforms presented in the local area plan.
18. However, later in the affidavit the applicant adopted a contradictory view of the AJRS, stating that its contents, its calculations and statistics were meaningful and it gave an accurate portrayal of current retail circumstances in the broader Athlone/Athlone West area.
19. In his oral submissions, the applicant submitted that he had been the victim of circumstances, whereby he had been encouraged by the respondent to invest in certain lands on the basis that they had been zoned for use as district centres, only to find that the development opportunity of such lands was considerably adversely affected by the change in zoning effected in MBLAP 2016, which change he alleged was contrary to all proper planning guidelines and contrary to the provisions of the planning Acts. It was submitted that the variations that had been adopted by the respondent for incorporation into MBLAP 2016, had been done solely as a means of validating a flawed plan. It was submitted that in those circumstances the court should grant him leave to challenge those variations.

Submissions on Behalf of the Respondent

20. In an affidavit sworn on 10th January, 2020, Ms. Mary Grier, a Senior Planner of the respondent, set out the history of the applicant's various interactions with the respondent. As noted previously, it was accepted that the applicant was the owner of lands in the Bogganfin area and in the Monksland area of Athlone, both of which lands were zoned as "*district centres*" in MBLAP 2010. She explained that a "*district centre*" would not be

intended to contain retail units of the size and nature that would compete directly with that of a large urban area, such as Athlone Town Centre, but would seek to primarily serve the local needs of residents within the discreet area and be readily accessible to the pedestrian catchment within a 5km radius of such a centre and to a wider residential catchment by a private car, public transport and cycling.

21. She stated that the applicant had applied on a number of occasions for planning permission for various forms of mixed use developments on the two plots of land, with significant emphasis on the provision of a discount food store at the Monksland plot. All such applications were ultimately unsuccessful in obtaining planning permission.
22. Ms. Grier stated that MBLAP 2016 differed from its predecessor in that the plan area was contracted and it also rezoned certain plots of land. The applicant's lands at Monksland remained within the plan area, but had been rezoned as "*new residential*". The lands at Bogganfin, were now outside of the plan area and were unzoned. She stated that during the development of MBLAP 2016, the applicant had made a number of submissions throughout the process, which were considered by the Chief Executive in the course of the process. The draft local area plan for 2016 – 2022 was adopted at a meeting of Athlone Municipal District on 27th June, 2016. It came into effect four weeks later on 25th July, 2016. No challenge was brought by way of judicial review, or otherwise, to the adoption of the plan.
23. Ms. Grier went on to deal with variation of the Roscommon County Development Plan 2014 – 2020. She stated that variation no. 2 to the RCDP included amendments to policies and objectives, as well as the inclusion of explanatory text. The retail strategy which formed part of the development plan was also amended to include an updated assessment of the Monksland/Bellanamullia (Athlone West) area only. She exhibited a copy of extracts from the RCDP, incorporating variation no. 2.
24. The variations did not include changes to the overall development strategy contained within the development plan and did not change the underlying land use objectives provided for by the existing local area plans.
25. She stated that a notice and copies of the proposed variation of the RCDP were sent to the Minister and to other nominated bodies. The draft variation went on public display at the respondent's offices in Roscommon and at the respondent's municipal district offices and area offices in Boyle, Ballaghaderreen, Strokestown, Castlerea and Athlone/Monksland on 1st February, 2019. The period for making submissions ended on 4th March, 2019. She exhibited a copy of the public display with the draft variations exhibited thereto.
26. Ms. Grier stated that a total of eight submissions were received, including one submission from the applicant. The content of all submissions were taken into consideration. The Chief Executive prepared a report dated 8th April, 2019 on the submissions received. That report was submitted to members of the respondent for their consideration. The report was published on the website of the respondent on 11th April, 2019. A copy of the

report was exhibited to the affidavit. In the report, the Chief Executive recommended that no change be made to the draft variation of the RCDP.

27. The report of the Chief Executive was submitted to the members of the respondent on 10th April, 2019. The members of the respondent agreed with the Chief Executive's recommendation in their formal deliberations of draft variations and agreed to the variations to the RCDP on 29th April, 2019. She exhibited a copy of the relevant resolution. A notice of the making of the variation to the RCDP was published in a newspaper circulating in the area. A copy of the variation was also sent to the Minister and to other nominated bodies.
28. In relation to the variation of MBLAP 2016: Ms. Grier exhibited a copy of the variation which incorporated the AJRS into the local area plan. She stated that the variations did not include changes to the overall development strategy contained within the plan as adopted in 2016, nor were there any changes to land use zoning.
29. Notice of the proposal to amend the local area plan was sent to the Minister and to other nominated bodies. The draft variation went on public display in the Roscommon People newspaper on 1st February, 2019 and the submission period ended on 19th March, 2019. A total of eight submissions were received, including one from the applicant.
30. The Chief Executive prepared a report dated 27th March, 2019 on the submissions. The Chief Executive recommended that no change be made to the draft variation to MBLAP 2016 based on the applicant's submission. Ms. Grier exhibited a copy of the Chief Executive's report.
31. Members of the Athlone Municipal District of the respondent considered the proposal to amend the local area plan and the report of the Chief Executive. The members agreed with the recommendation of the Chief Executive and the variations were formally adopted on 7th May, 2019. She exhibited a copy of the relevant resolution. The amendment to MBLAP 2016 came into effect on 7th May, 2019. Ms. Grier stated that the variations to RCDP and MBLAP 2016 were carried out in accordance with the applicable statutory provisions.
32. In its legal submissions, the respondent submitted that the applicant had not advanced any arguable basis for the granting of leave and had not met the threshold set down in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374.
33. It was submitted that the applicant had not raised any arguable case that the procedure that had been adopted by the respondent in relation to the variation of either the RCDP, or MBLAP 2016 had been carried out in other than the proper statutory manner. It was submitted that the content of Ms. Grier's affidavit made it clear that all necessary steps as required under statute had been taken.
34. It was submitted that the primary focus of the applicant's reliefs, as set out in the statement of grounds, related not to the variations of the various plans, but to the validity

of MBLAP 2016 itself. In this regard, counsel referred to the reliefs set forth at para. (E) in the statement of grounds. He stated that that was in reality an attack on MBLAP 2016. It was submitted that the applicant was not entitled to mount such an attack, as he was long out of time to challenge the legality of that plan, which had been adopted in 2016.

35. Counsel referred to the decision of McGrath J. in the previous judicial review action brought by the applicant against ABP. He submitted that as appeared from the judgment, the current local area plan and its zoning objectives formed part of the decision making process of ABP in that case and was referenced in the argument made in the course of that action which were outlined in the said judgment. In the period between the hearing of that action and the delivery of judgment by McGrath J., the applicant had instituted the present proceedings, as a means of closing off the argument that had been made by An Bord Pleanála to the effect that their decision had been based on the content of MBLAP 2016, by effectively seeking to challenge the legality of MBLAP 2016 itself; notwithstanding that he was out of time to do so.
36. It was submitted that the applicant was purporting to be concerned with the variations made to MBLAP 2016 and RCDP, when that was in reality a fiction designed to enable him to attack another instrument, which he was long out of time to challenge.
37. It was submitted that even if the applicant were granted leave to challenge the variations to the two plans and even if the variations were held to be unlawful, it was submitted that that would not assist the applicant in any practical sense, because the variations did not affect the rezoning of his lands, which had been effected in MBLAP 2016, which was the primary source of his complaints. Thus, if the variations were struck down, he would still be left in the position that he was in at present in relation to the zoning of his lands.
38. It was submitted that there were no arguable grounds for granting leave on the basis of the matters set out in the applicant's affidavits, as there was no infirmity in the procedure which had led to the incorporation of those variations into the two plans. It was submitted that there were no credible basis on which it could be argued that those variations should be struck down. In the circumstances it was submitted that the court should refuse the applicant leave to seek relief by way of judicial review.

The Applicable Legal Test

39. Order 84, rule 20 (1) of the Rules of the Superior Courts places an obligation to apply for leave to seek judicial review:-

"No application for judicial review shall be made unless the leave of the Court have been obtained in accordance with this rule."

40. It has been long accepted in Irish law that the threshold an applicant must meet on an application for leave to seek judicial review is that their case is an arguable one. This is not a high threshold to meet. The leave stage has been described as a judicial screening process and it helps prevent an abuse of the judicial review process by not allowing trivial or untastable cases to proceed. The court is not required to ascertain the probability of

the claim being successful, or to consider the merits of the arguments proffered by the applicant. The application is made *ex parte* to a judge of the High Court unless statute requires that it be made on notice, or the judge directs that it be so made.

41. The authoritative case which sets out the threshold an applicant must meet at the leave stage, is the case of *G. v Director of Public Prosecutions* [1994] 1 I.R. 374. This case concerned an application for leave to seek an injunction or prohibition to prevent the criminal trial of the applicant. The High Court refused the application for leave to apply, but this decision was reversed on appeal to the Supreme Court. Finlay C.J. set out the relevant test to apply to an application for leave in the following terms at p. 377 – 378:-

"An applicant must satisfy the court in a prima facie manner by the facts set out in his affidavit and submissions made in support of his application of the following matters:-

- a) That he has a sufficient interest in the matter [...]*
- b) That the facts averred in the affidavit would be sufficient if proved, to support a stateable ground for the form of relief sought by way of judicial review.*
- c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.*
- d) That the application has been made promptly [...]*
- e) That the only effective remedy [...] which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is [...] a more appropriate method of procedure.*

These conditions or proofs are not intended to be exclusive and the court has a general discretion, since judicial review in many instances is an entirely discretionary remedy which may well include, amongst other things, consideration of whether the matter concerned is one of importance or of triviality and also as to whether the applicant has shown good faith in the making of an ex parte application."

42. It has generally been accepted that the arguability standard is not a demanding one. In *O'Reilly v. Cassidy* [1995] 1 I.L.R.M. 306, a Supreme Court judgment concerning an appeal from the High Court where leave to bring judicial review proceedings had been refused, Finlay C.J. stated as follows:-

"This Court is not concerned in trying to ascertain what the eventual result is. It is concerned that it should not permit the issue of proceedings if they are not arguable and it goes no further than that in the investigation it can make at this time. It is not appropriate or proper for it to express any view as to whether they are strong or weak if the grounds alleged are arguable then in the facts of this case

where an important order has been made and where the application has been made very rapidly, none of the other difficulties which might arise in a judicial review and in my view if the arguable grounds have been set out then the order should issue."

43. With regards to applications for leave which are made on notice, it has been accepted that the standard which should be applied to the applicant's claim remains that of arguability. In *D.C. v. Director of Public Prosecutions* [2005] 4 I.R. 281, Denham J. stated as follows at p. 289:-

"Reference was made in the High Court to a different standard of proof in cases where the respondent is on notice of the application. However, I do not apply such an approach in this appeal. It appears to me that there is a real danger of developing a multiplicity of different approaches [...] it appears to me that the appropriate law is that which has been well established in this jurisdiction based on G. v. The Director of Public Prosecutions. It is that standard which I apply to this application."

44. Rule 24 (1) of the Rules of the Superior Court now deals expressly with the hearing of a leave application on notice:-

"The Court hearing an application for leave [...] may, having regard to the issues arising, the likely impact of the proceedings on the respondent or another party, or for other good and sufficient reason, direct that the application for leave should be heard on notice and adjourn the application for leave on such terms as it may direct and give such directions as it thinks fit as to the service of notice of the application for leave (and copies of the statement of grounds, affidavit and any exhibits) on the intended respondent and on any other person, the mode of service and the time allowed for such service."

45. Although the rules now provide for the hearing of a leave application on notice, they do not indicate whether a hearing on notice imposes an onus of proof on the applicant over and above the "arguability" standard laid down in the *G. v. Director of Public Prosecutions* case.
46. Based on the statement of the law as outlined above, it is clear that the appropriate test to apply to an application for leave to bring judicial review proceedings, is the arguability test as originally set out by Finlay C.J. in *G. v Director of Public Prosecutions*. That standard was followed and applied by Denham J. in the D.C. case and the proposition that a different standard should be applied when the application for leave is made on notice, was rejected.

Decision

47. The court has considered the five affidavits and voluminous exhibits submitted by the applicant. While he has made extremely wide-ranging criticisms of the general planning process, the gravamen of his complaints relate to the change in zoning of his lands from "district centre" to "new residential" in MBLAP 2016.

48. The applicant made submissions in the course of the preparation of that local area plan. He is greatly dissatisfied with the change in zoning of his lands effected therein. However, he did not challenge MBLAP 2016 by way of judicial review. He stated that he did not adopt that course, because he had an appeal pending before ABP at that time. He thought that they would address his complaints about MBLAP 2016 in the course of that appeal. When they refused planning permission for his development, he brought judicial review proceedings against ABP; which proceedings were ultimately unsuccessful: see judgment of McGrath J. in *Kenny v. An Bord Pleanála* [2020] IEHC 290.
49. One point is absolutely clear: the applicant did not challenge MBLAP 2016. He is now long out of time to challenge that plan.
50. There is considerable strength in the argument put forward by the respondent that these judicial review proceedings, while nominally a challenge to the variations to RCDP and MBLAP 2016, are in fact a collateral challenge to the local area plan itself. On reading the applicant's extensive and often repetitious affidavits, it is clear that his main complaint is about the rezoning of his lands under the 2016 plan.
51. While that may be the case, the court is of the view that on a leave application, it must inquire whether the applicant has established an arguable case that the variations were unlawful, either due to their content, or due to an infirmity in the procedure leading to their adoption. Thus, the court must ignore whether the applicant has some ulterior motive in bringing these proceedings and must focus on whether he has established an arguable case that he is entitled to the reliefs sought in his statement of grounds.
52. The respondent has argued that there would be no benefit to the applicant in obtaining the reliefs sought in the statement of grounds, because if he were to succeed in having the variations quashed, that would not affect the rezoning of his lands, effected under the 2016 plan. While that may be correct, it is not a reason to deny the applicant leave to seek relief, if the court were to be satisfied that he has demonstrated an arguable case that the making of the variations was unlawful.
53. The essential question is whether the applicant has shown that he has an arguable case that he is entitled to the reliefs that he claims in respect of the variations made to the two plans. Having considered the applicant's affidavits in detail and making all due allowance for the fact that he is a lay-litigant, the court is not satisfied that the applicant has shown that he has an arguable case that the variations to the RCDP or MBLAP 2016 should be struck down.
54. While the applicant has made a very large number of vague allegations in relation to alleged inconsistencies and errors in MBLAP 2016, such as the fact that that plan was adopted prior to the AJRS being in place; the fact that there may be an incorrect estimate of population growth in one of the documents, having regard to the preliminary census figures published in June 2014 and his allegation that the zoning of other lands nearby as "district centre" was irrational, due to the fact that these were lands that he alleged had been used as an illegal quarry; the court is not satisfied that any of the numerous

allegations made by the applicant in his affidavits affect the legality of the variations made to the RCDP or MBLAP 2016.

55. The applicant has not challenged in any meaningful way the procedure leading to the adoption of the variations. The court is satisfied on the basis of the affidavit sworn by Ms. Grier on behalf of the respondent, that there was no procedural irregularity in the adoption of the variations by the respondent in respect of either of the plans.
56. Insofar as the applicant has challenged the impartiality of members of the respondent who voted for the variations to RCDP and MBLAP 2016, the court is satisfied that his assertions or allegations in this regard are without any evidential basis. He has not provided any evidence on which a court could find that those members had a conflict of interest when voting on the variations. The furthest that he has gone was to state that the chairman of the committee which voted on the variations to MBLAP 2016, was an auctioneer, who had an extensive practice in the area. The court accepts the submission made by counsel on behalf of the respondent that where such matters are voted on by county councillors, they are invariably people who work in the local area. The court is not satisfied that the applicant has established any arguable ground on which it could be argued that there was a conflict of interest on the part of the chairman, or any member of the committee, when voting to adopt the variations to the two plans.
57. The core argument put forward by the applicant was to the effect that the sequence of the adoption of MBLAP 2016 and the AJRS had been inverted. He submitted that the retail strategy should have predated the formulation of the local area plan. On that basis, he submitted that the variations were an attempt to validate the MBLAP 2016 by "*retrofitting*" the AJRS into it. Given that MBLAP 2016 was adopted in 2016 and the AJRS was only adopted in 2019, the court does not see that the respondent acted in any way unlawfully, or wrongly, in adopting the variations that it did. The respondent had to put a new local area plan in place in 2016, due to the fact that the previous local area plan expired at that time. Accordingly, they had to proceed with a new local area plan notwithstanding the absence of any AJRS at that time. The applicant has not raised any arguable ground on this basis.
58. In his affidavits the applicant is very critical of the role of the planning officer of the respondent and of the Inspector of ABP and of the Board itself, in relation to his various planning applications on his lands at Bogganfin and Monksland. Those criticisms, be they well founded or not, are entirely irrelevant to the issues before the court in these proceedings.
59. The applicant has not shown any arguable case that the variations were unlawful, either having regard to their content, or to the procedure which led to their adoption. The variations were necessary due to the provisions of the AJRS. The respondent was obliged to have regard to that strategy. It did so by incorporating the relevant provisions of that strategy into the two plans. The court cannot see that the respondent did anything wrong in so doing.

60. At the end of the day, while the applicant has put before the court a blizzard of complaints and documentation, he has not raised any arguable grounds that the variations to the RCDP or MBLAP 2016 were unlawful. The court has had regard to the dicta of Humphreys J. in *M. McD. v. DPP* [2016] IEHC 210 at para. 42:

*"42. A claim is not arguable merely because its consideration requires an amount, even a considerable amount, of debate and consideration by the court: By way of example see the very detailed judgments of Peart J. refusing leave in *Duffy v. Clare County Council* [2013] IEHC (8th February, 2012); and *Kelly v. Flanagan* [2014] IEHC 378 (26th June, 2014). An applicant does not establish substantial or even arguable grounds merely by weight of papers or number of grounds pleaded, or merely by virtue of the quantity of submissions, affidavits and time required to deal with the matter: See my judgment in *O'Mahony Developments v. An Bord Pleanála* [2015] IEHC 757 (27th November, 2015) at para. 50."*

61. Having considered all of the material and arguments put forward by the applicant, the court is not satisfied that he has made an arguable case that the variations made by the respondent to RCDP or MBLAP 2016 were unlawful, or in any way irregular. He has not raised an arguable case that he is entitled to the reliefs sought in his statement of grounds. Accordingly, the court refuses the applicant leave to seek the reliefs set out in his statement of grounds.