



**THE HIGH COURT
PLANNING & ENVIRONMENT**

[2024] IEHC 364

[H.JR.2024.0000297]

BETWEEN

ÁINE KELLY

APPLICANT

**AND
AN BORD PLEANALA**

RESPONDENT

**AND
NATIONAL TRANSPORT AUTHORITY**

NOTICE PARTY

JUDGMENT of Humphreys J. delivered on Wednesday the 19th day of June, 2024

"This is what I envisage for my future for the rest of my life. Again, remember that I have no front garden, and my front door opens directly onto the path where the bus stop will be situated. Never again being able to challenge anyone who is standing directly outside my front door, no matter what hour of the day or night it is; coming home from work in the dark, which in winter is the early evening, having unknown strangers standing outside my front door, without any means for me to challenge their presence; putting my key into my front door and opening the door with strangers standing beside me. If anyone wishes ill intent on me or my property, they won't have to break in; I will be opening the door for them. It is simply unacceptable for Aidan Gallagher and for the staff with the decision making powers in the NTA and An Bord Pleanála to be placing me and my neighbours in this situation, a situation, I hazard to guess, that they would not accept for a second if it affected their own homes and families, when all they need to do to prevent this is to make a minor adjustment to the plans to move the bus stop a short distance from its proposed location."
[Applicant's submission at the leave hearing, p. 21]

1. The applicant challenges a board decision authorising the erection of a bus stop directly outside her front door, which opens directly onto the footpath with no garden, path or other buffer zone. The applicant's concerns were arguably swept aside in minimising language by the board and held to be outweighed by the importance of the scheme. The central issue is whether the applicant has shown substantial grounds to proceed with a challenge based on arguments related to disproportionality and lack of reasons.

Geographical context

2. This leave application concerns the Clongriffin Scheme which is a public transport infrastructure project comprising 5.7 km of bus priority infrastructure and ancillary traffic management, together with 11.9 km of cycling infrastructure and facilities and the provision of new and refurbished pedestrian facilities and associated works including upgrading of junctions, reconfiguration of existing bus stops and public realm improvements and works, in the urban and suburban north of Dublin City between Clongriffin and the city centre.

3. The contested part of the development occurs near the applicant's house in the Malahide Road area. On the inbound (city-bound) route the proposal is to remove two bus-stops in this area and add a new stop, directly outside the applicant's front door with no garden or other space acting as a buffer zone. On data minimisation principles, there is no particular need to identify the street or address more specifically.

Facts

4. Changes to bus arrangements on the Malahide Road have been in train for some time. The applicant wrote to the Quality Bus Network design team as far back as 12th June 2006 expressing some concerns.

5. Twelve years later, following the announcement of the Bus Connects strategy, she wrote to public representatives outlining her views on 12th June 2018.

6. On 14th November 2018, the NTA launched a first round of non-statutory public consultation on the Emerging Preferred Route Option for the Clongriffin to City Centre Core Bus Corridor Scheme. Published drawings showed Existing Bus Stop 1220 (albeit relocated 15 m southwest) as that existing bus stop was not proposed for removal at that time. In error, Existing Bus Stop 1219 was omitted from the drawings. At that point, it was not proposed to place the Bus Stop at the location which is now proposed.

7. The applicant is sceptical about the claim that the omission of existing bus-stops from the first and second consultations was really accidental error. But that complaint hasn't been developed evidentially.

8. The applicant put forward a submission on 26th November 2018 (although for some reason the NTA don't have a record of this):

"26 November 2018 at 18:29 To: Project manager, Bus Connects (TDs and Councillors cc'ed). I am writing on behalf of myself and my neighbours at [the street concerned], Malahide Road, regarding the emerging preferred route for the Clongriffin to city centre bus route.

I have previously contacted you via my public representatives (cc'ed here), expressing my concern that any potential changes to the road layout would involve narrowing the footpath in front of our houses. Having viewed Map 15 of the proposed route, it appears that you are suggesting to take some of the footpath to widen the road in front of our houses.

As a first question, may I ask whether that is in fact the plan? I would appreciate clarification on whether or not you propose to remove any of the footpath in front of our homes, since it is not quite clear from the drawings.

I outline below my objections to any narrowing of the footpath in front of the houses at [the street concerned].

1. There are no gardens in front of our houses, hence our front doors open directly onto the footpath. Narrowing the footpath means that traffic on one of the busiest roads in the city will pass even closer to the front of our properties.

2. This poses a grave safety risk to pedestrians and residents. In our experience, cars have accidentally mounted the footpath on occasion. A truck mounted the path and demolished the front wall of my home when turning the corner from the Kilmore Road junction too sharply, when the house was occupied by the previous owner in the 1980s.

3. Many of the residents of the cottages are elderly people, some of whom have lived in their homes for many years. They have expressed to me their very great fear of having traffic brought closer to their homes.

4. Rear vehicular access to our properties is via a laneway barred by gates to which residents have keys. In order for us to park to the rear of our properties, we must temporarily park perpendicular to the road and open the gates manually. As it is, there is not enough room to park a standard sized car safely while opening the gates. Narrowing the path will mean leaving a sizeable part of the rear of the car blocking the bus lane, again posing a safety risk.

5. As it is, proximity of traffic generates much dirt and debris on the footpath, particularly in wet weather, that finds its way into our properties through doors and windows and affects the air quality - this would be much worse if the footpath is narrowed.

6. There is ample space at the other side of the road at St David's Wood to carry out the works there. This will not require purchase of land or inconvenience to anyone else, since the path is bordered by publicly accessible grassy areas that I assume are owned by Dublin City Council. I see from the maps that you propose creating a new boundary here in any case - may I suggest that all of the road widening makes use of this footpath, and that if necessary the footpath can be extended backwards into this grassy area?

A proposal to narrow the path was mooted in 2006. At that time, I wrote to Mr Ciaran de Burca, the project manager, outlining the concerns I expressed above. A decision was made not make significant changes to our path - I assume because the planners were convinced by my arguments about safety and welfare. I suggest that that should still be the case. The wording of that decision is below.

'The Quality Bus Network Project Office has noted the objections raised by the residents of [the street concerned] in relation to proposals to reduce the width of the footpath outside their houses. The Quality Bus Network Project Office has prepared a revised layout for this section of the scheme which minimises the impact on the footpath on the east side of Malahide Road outside the [the street concerned]. The majority of the road widening will take place on the west side of Malahide Road between St. Davids Wood and Kilmore Road.' I support in principle the Bus Connects project. As a daily Dublin Bus user I welcome any improvement to the safety and efficiency of the public transport network, but not at the expense of the safety or wellbeing of the residents of Dublin. I would hope that the general goodwill about the project is not marred by proposals that would diminish the quality of life of myself and my neighbours and our enjoyment of the homes that many of us have lived in for decades. If any proposal is made that will compromise the safety of my home or those of my neighbours, I will oppose it in the strongest possible terms."

9. This email wasn't formally exhibited although the opposing parties didn't strongly press any point about that. That can be rectified if the matter goes further.

10. On 11th December 2018, the first Community Forum meeting for the Clongriffin to City Centre Core Bus Corridor took place at the Hilton Hotel, Malahide Road with approximately 20 people in attendance including the applicant.

- 11.** On 10th January 2019, a public information event was held in relation to the Clongriffin Scheme at the Hilton Hotel, Malahide Road where members of the public could drop in to view information about the Emerging Preferred Route and ask questions of the BusConnects Infrastructure team.
- 12.** The applicant copied her 2018 submission to public representatives by email on 21st February 2019.
- 13.** 29th March 2019 was the deadline for submissions for the First round of non-statutory public consultation on the Emerging Preferred Route Option for the Clongriffin Scheme.
- 14.** On 11th September 2019, a community forum for the Clongriffin to City Centre Core Bus Corridor took place in the Hilton Hotel, Malahide Road. There were approximately 15 in attendance including the applicant.
- 15.** A second round of non-statutory public consultation commenced on 4th March 2020 in respect of the Preferred Route Option. In error, the drawings published in respect of the Preferred Route Option did not identify Existing Bus Stops 1219 or 1220. At that time, it was not proposed to place the bus stop at the location which is now proposed.
- 16.** On 11th March 2020, a public information event was held in the Hilton Hotel, Malahide Road in relation to the Preferred Route Option. The public could drop in to view information and ask questions to the BusConnects Infrastructure team in relation to the Preferred Route Option.
- 17.** The deadline for submissions for the second round of non-statutory public consultations on the Preferred Route Option was 17th April 2020.
- 18.** On 4th November 2020, the third round of non-statutory public consultation was launched in respect of the Preferred Route Option. Existing Bus Stops 1219 and 1220 were not shown on the drawings published as part of the third round of public consultation.
- 19.** The applicant wrote on the same date seeking information on the proposals in relation to the pavement at her house.
- 20.** On 17th November 2020, the NTA replied referencing an intention to only provide for an upgrade. The applicant takes issue with the accuracy of this given what later emerged.
- 21.** On 18th November 2020, a community forum was held online *via* Zoom in relation to the Clongriffin to City Centre Core Bus Corridor. Approximately 15 people were in attendance including the applicant.
- 22.** On 16th December 2020, the third round of non-statutory public consultations on the Preferred Route Option closed.
- 23.** The application for approval was submitted by the NTA to the board on 1st April 2022, including an EIAR, a Bus Stop Review Methodology statement and Bus Stop Review Analysis as Appendix H to the Preliminary Design Report. The application included the proposed new bus stop outside the applicant's house.
- 24.** Public notices were issued and formal submissions were invited under the Roads Act 1993.
- 25.** On 6th April 2022, the NTA wrote to the applicant enclosing the proposal to make a CPO in relation to part of a lane in respect of which the relevant residents had an interest.
- 26.** On 7th April 2022, a newspaper notice was published by the NTA in the *Irish Independent* and the *Dublin Gazette* in accordance with section 51(3)(a) of the Roads Act 1993 notifying the public of the making of the development consent application. It was outlined that the documents were available for public inspection and that submissions could be made to the board by 2nd June 2022.
- 27.** Another newspaper notice was published on the same day by the NTA in the *Irish Independent* and the *Dublin Gazette* in accordance with s. 76 of the Housing Act 1966 notifying the public of the CPO. The documents were made available for public inspection and it was outlined that objections could be made to the board by 2nd June 2022.
- 28.** On 8th April 2022, an application was made by the NTA to the board for confirmation of the Clongriffin to City Centre Core Bus Corridor Scheme CPO 2022 under s. 76 of the 1966 Act.
- 29.** On 10th May 2022 the board received a submission from the residents of [the street concerned], which residents' group included the applicant. The submission is described by the board as a submission of "Anna Hofheinz & Ors". The submission includes the following:
- "An Bord Pleanála
Strategic Infrastructure Division
64 Marlborough Street
Dublin 1 D01 V902
Dublin, 10-05-2022
RE: Objection to Application for Approval of a Proposed Road - CLONGRIFFIN TO CITY CENTRE CORE BUS CORRIDOR SCHEME – at [the street concerned], by the National Transport Authority, Case Ref. HA29N.313182
Dear sir, madam,

[A]s residents and owners of properties on [the street concerned], Malahide Road, Dublin 5, we would like to submit our strong objection to the location of a new bus stop in front of the terrace of houses at [the street concerned] as part of the proposed development above.

1. Physical Context – [the street concerned]

The terraced single storey houses on [the street concerned] (approx 140m length) are the oldest remaining buildings on this stretch of Malahide Road (dating back to the mid to late 1800s). They were built as smallholdings for tenants by Dublin Corporation and are the only visible remnants of Artane's history as a village on the outskirts of Dublin. They are now unique along the length of the above scheme, in their situation directly on the road, without the benefit of front gardens. All houses apart from no. 10 (now a two-storey mixed use building of shops with apartments over) remain in residential use, and are suffering from severe noise, air and light pollution due to the high volume of traffic on Malahide Road, as well as from the lack of privacy due to high footfall along the footpath.

The EIA associated with the above application by the NTA to An Bord Pleanála identifies the terrace as being of 'medium regional significance' (refer EIA Appendix A16.2 p. 30) and finds that the proposal as submitted will cause negative long-term impact (refer fig. 1). We note that [the street concerned] are the only 'Other Structures of Architectural Heritage Interest' (EIA, Chapter 16.4.4.4) negatively impacted along the entire scheme: '1-12 [the street concerned] (CBC0001BTH013) where a new bus-stop is proposed in front of numbers 5 and 6, and cantilevered signals are proposed controlling the junction opposite Number 9. The cottages are of Medium Sensitivity. The proposed new structures will have an adverse visual impact on the setting of the terrace, the magnitude of which is Low. The potential Operational Phase impact is Negative, Slight and Long-Term.'

We do not share the EIA's assessment that the impact is slight. The further impact (beyond architectural heritage) on residential amenity is not reflected anywhere in the EIA, and it is not demonstrated how the NTA intends to mitigate against the negative longterm impact. The impact on residential amenity is direct, severe and long-term if the proposed bus stop is implemented in its currently proposed location and form. The architectural integrity of the terrace at [the street concerned] is under threat already due to the pressures of a busy arterial road on what historically were rural cottages. The lack of effort on the side of the NTA as applicant to mitigate issues identified in the Architectural Heritage Impact Assessment (fig. 1) shows a lack of respect for architectural heritage. The bus stop increases pressures on those properties further and undermines efforts by the undersigned residents to maintain the houses occupied and in their original character. We call on the NTA to improve the residential amenity for residents at [the street concerned], and to work with the residents during the implementation phase to lessen the impact that even a revised scheme that relocates the bus stop away from the terrace would have on the buildings and their occupants (refer section 4). ...

2. Preferred Route Option development history

The scheme has been re-designed multiple times during its public consultation stages, leading up to the submission to An Bord Pleanála now. We welcome that the Bus Connects preferred route was re-designed between public consultations 1 and 2 to maintain the footpath outside [the street concerned] (the only buffer between the road and the houses), including the added distance to the carriageway by virtue of the segregated cyclepath, and to introduce cycle / foot paths on the green verge on the (northbound) western side of the road.

'It is important to note that existing bus stops located along the Core Bus Corridors will have been subject to considerable thought by Bus Operators, An Garda Síochána, and the Local Authority. For this reason, it is imperative that each location is closely examined before it is considered for relocation or removal.' (Preliminary Design Report, Appendix H, p.1)

In the development of the Preferred Route Options, there is no evidence of such careful consideration prior to proposing the removal of 2no. bus stops directly north and south to the now proposed location:

The bus stop Danieli Road (1219) was removed prior to consultation 1.

Between consultations 1 and 2, a previously revised bus stop Killester Avenue (1220) was removed, both crucially without replacement or an amalgamated new stop north or south of map 15, refer fig. 2 and 3. ...

Between consultations 2 and 3, the scheme was fundamentally re-designed between Kilmore Road and Killester Avenue to include a new bus stop at [the street concerned]. This however is only apparent in the detailed drawings (refer fig. 4).

The written report, which is the primary document for any non-technical person, does not mention those changes. The public consultation brochure for consultation 3 (Preferred Route Option Report, Appendix I) is in fact grossly misleading in its summary at 4.4 Gracefield

Road and Clontarf Road Malahide Road, and 4.5 Key Changes. While the proposal is described in apparent detail in these sections, none of them mention an additional bus stop at [the street concerned].

Elsewhere in the submitted documentation, stops Danieli Road (1219) and Killester Avenue (1220) are listed as being removed 'due to proximity with the new Kilmore Road Stop'. (Preliminary Design Report, Appendix H, p. 44 of 52, Location Review). As demonstrated above, this is factually incorrect and again misleading, as the new Kilmore Road Stop was only introduced retrospectively in advance of consultation 3, while the other stops had been removed prior to consultations 1 and 2 respectively.

'Where existing bus stops on a route are in close proximity to each other they may be amalgamated into a single stop. This must be assessed on a case-by-case basis.' (Appendix A4.1 - Preliminary Design Guidance Booklet for BusConnects Core Bus Corridor, section 11. Bus stops)

No such assessment has been made public, and no details of alternative proposals are available. Neither had the previous omissions of stops 1219 Danieli Road and 1220 Killester Avenue triggered an amalgamated new stop until after consultation 2. It is also worth noting that in the revisions of the Preferred Route Options up to consultation 3, no other bus stops were added or removed anywhere along the line, with only minor adjustments or re-locations made to some stops. We maintain that such a major and impacting change should have been highlighted in consultation documents and directly to the impacted residents. This has not happened, and it could be understood that the omission of such a relevant detail in the written report may have been intentional to avoid complaints or objections. Despite this, there have been multiple observations at consultation 3 of residents noting the unacceptable design and location of the bus stop (refer Preferred Route Option Report, Appendix C, p. 46-48), none of which have been addressed in the submitted proposal.

The final drawings lodged with the application (refer fig. 5) are broadly in line with consultation 3, with an apparent slight improvement on the footpath width at [the street concerned] (which had silently been narrowed again between consultations 2 and 3), and further detail shown at the bus stop, refer to item 3 of this submission. ...

3.3. Compromised proposed location

'The basic criteria for consideration when locating a bus stop are as follows: (...)

- Where there is space for a bus shelter; (...)
- Adequate footway width.' (Preliminary Design Report main report, p. 45) "(...) the size of the stop needs to be sufficient to meet the expected passenger and bus demand, and the bus stop itself must not become a bottle neck to the operation of the corridor.(...) (The Preliminary Design Report, Appendix H, p.1)

Even though the NTA criteria are extremely limited in that they only consider the physical constraints and traffic planning, we demonstrate in our submission that the proposed bus stop location is in contravention to NTA's own criteria, in addition to comments at 3.1 and 3.2. above.

The proposed bus stop is the only one along the entire length of the Clongriffin to City Centre bus corridor scheme located in front of residential property without front gardens, and does not provide space for a bus shelter, nor does it provide adequate footway width to accommodate even a compromised stop.

The residents of [the street concerned] are already dealing with privacy issues due to the proximity of the footpath, such as people shouting outside the (bedroom) windows, knocking on windows and sitting down on window sills. These concerns are not taken into account. However, a scheme in this constrained situation that - if successful - will increase the number of bus users, will worsen the situation, especially for properties without any possibility to privately react to this negative impact, is unacceptable: It is not an option here to densely plant a front garden or erect a tall gate and boundary wall to the front. Bedrooms and living rooms open out directly onto the footpath, often with the only window. It is the duty of the local authority and the National Transport Authority to protect such properties and their residents and if possible improve their amenities, or at least not worsen the arrangement. We note that none of the Impact Assessments submitted with the application take note of this severe, ongoing negative impact.

The bus stop is located less than 25m from the proposed controlled pedestrian crossing to Kilmore Road, at a junction where two bus lines (from West on Kilmore Road, from North on Malahide Road) converge. This will likely lead to busses backing up north and west of the junction, which in turn will lead to busses backed up in front of nos. 7, 8 and 11 [the street concerned], resulting in increased noise and air pollution, as well blocking out light to those properties. This appears contrary to proper traffic planning and will further reduce residential amenity of the entire terrace, and constitutes a bottle neck along the bus corridor.

In this context, we object also to the local narrowing of the footpath at the junction to accommodate a right turn hold for the cycle path (refer Preliminary Design Report, Appendix L, p. 40 of 68) – the proposed layout leaves less than 1.8m footpath, compared to currently approx 3.5m, directly in front of the front door of no. 9 [the street concerned]. This is in direct contravention to the commitment by the NTA to retain the full width of the footpath. In addition to undue increased pressure on the residential amenity of no. 9, it also diverts any pedestrian footfall closer to the front elevations to the terrace than a continuous 3m wide footpath would do. Any right turn arrangement for inbound cyclists onto Kilmore Road could conceivably be accommodated at the much wider footpath in front of no. 10 [the street concerned], allowing for example a two-way cycle lane on the northern and western arm of the junction, or a revised cycle crossing layout on the southern arm.

Note: this issue is independent of a relocation of the bus stop as argued elsewhere, and should therefore be identified by way of a separate condition by An Bord Pleanála.

3.4. Alternative locations As demonstrated above, the proposed design and location is of a lesser quality than both stops 1219 and 1220 currently. The proposal effectively replaces two bus stops in front of wide footpaths and front gardens (1219: 14m footpath in front of commercial property, 1220: 5m footpath plus 14m front garden to residential property) with one bus stop with a 3m foot path outside residential properties without front gardens.

Both at the terrace of commercial properties at 25a-g Malahide Road (stop 1219 previously outside 25G Malahide Road) and at 276 – 302 Malahide Road (stop 1220 previously outside 282 / 284 Malahide Road), there would be sufficient depth of the footpath / public realm to introduce island bus stops fully in line with the stated preferred NTA bus stop design, refer fig. 7.

A revision of bus stop 1219 south by approx. 30-50m to in front of 25a Malahide Road would bring the distance Mornington Grove 1277 to Danieli Road to longer than 250m. In this scenario, stop 1220 could be retained in its current location, and all distances southbound would be within the proposed range as at 3.1.

If it was not deemed feasible to retain stops 1219 and 1220, the proposed new stop could be relocated: The footpath widens a mere 65m south of the proposed bus stop, at nos. 302 / 300 Malahide Road, to approx. 8m deep. The properties here have front gardens in excess of 15m depth. The location would allow for adequate detailing of the bus stop (again fully in line with details in fig. 7) and appropriate congregation space for people waiting for busses. This, possibly in tandem with a relocation of stop 1277 south towards Danieli Road, would achieve acceptable distances comparable to the proposed.

'Another important aspect of bus stop positioning is proximity to pedestrian crossings. Failure to provide high quality pedestrian facilities on the pedestrian desire line may lead to a higher accident risk associated with a bus stop. Therefore, designers need to consider how passengers are going to cross the road to get access to the stop, in general this will require bus stops to be located close to safe crossing points.' (Preliminary Design Report, Appendix H, p.8)

The NTA proposal at [the street concerned] limits its considerations only to absolute proximity to the pedestrian crossing. As above, if the stop was located 65m further south where the footpath widens, the only pedestrian desire lines would be straight north towards Kilmore Road (towards the pedestrian crossing) and south towards Killester Avenue, as there is no permeability directly opposite to the west into St. David's Wood and Pinebrook Road residential estates (as noted before, there is no proposal by the NTA to improve permeability here). The minimal improvement with regard to proximity to the crossing is disproportionate to the negative impact on [the street concerned] and the bad bus stop design (refer section 3.2. of this submission).

The NTA proposes multiple bus stops with distances in excess of 50m to the nearest pedestrian crossing, and only stops in excess of 100m from a junction (refer Kilmore Rd outbound, Preliminary Design Report, Appendix L, p. 40 of 68) were relocated to be in line with the criteria (refer Preliminary Design Report, Appendix H (Bus Stop Review Methodology), p. 42-46 of 52 Location review). A relocation of the contested bus stop outside [the street concerned] to 302 / 300 Malahide Road could still remain within the 100m distance."

30. 2nd June 2022 was the deadline for submissions and objections to made to the board in relation to the s. 51 application and the CPO.

31. On 23rd June 2022, a letter was sent from the board to the NTA enclosing copies of the EIA submissions, including submissions listed by the board as "Anna Hofheinz & Others" which was signed by the applicant, requesting the NTA to make any submissions or observations that they might have in relation to the submissions.

32. On the same day the board sent another letter to the NTA which enclosed copies of the objections to the CPO (including the same submissions as noted above but which was also included in this CPO bundle and marked by the board in their list as Áine Kelly) requesting the NTA to make any submissions or observations that they might have in relation to CPO objections.

33. The NTA submitted a response document on 21st July 2022. That considered alternative locations for the bus stops including no change:

“Scenario 1: Retain existing bus stop locations at Danieli Road (1219) and Killester Avenue (1220) and avail of the wide footpaths in these areas ...

Scenario 2: Relocate the Danieli Road stop (1219) 30-50m south and retain the Mornington Grove Stop (1277) and Killester Avenue stop (1220) in existing locations ...

Scenario 3: Remove the Danielli Road stop (1219) and the Killester Avenue(1220) stop and provide a new bus stop outside 302/300 Malahide Road using the existing Mornington Grove Stop (1277) or relocate the Mornington Grove Stop (1277) to accommodate a revised spacing arrangement between bus stops.”

34. These scenarios are analysed as follows:

“The NTA welcome the understanding from the submissions regarding the importance of spacing of bus stops along the corridor.

Scenario 1 does not perform as well as the Proposed Scheme against the bus stop review criteria. Due to the close proximity of stops, this offers limited benefit for additional catchment area as a result of the overlapping zone of influence and is likely to result in increased delays due to dwell time (boarding/alighting) including speed reduction at each of these stops which could compromise overall journey times for buses along the corridor. Scenario 2 does provide an improvement from Scenario 1 by rationalising the distances between stops, however this has a less effective catchment area from Kilmore Road by comparison to the Proposed Scheme arrangement which is of particular importance in light of the bus routing change on Kilmore Road as set out in Figure 2.3.6.

Similarly, Scenario 3 does provide an improvement from Scenario 1 by rationalising the distances between stops, however this has a less effective catchment area from Kilmore Road by comparison to the Proposed Scheme arrangement. Both Scenario 2 and Scenario 3 would also need to consider the impacts on the outbound services. As set out above, one of the basic criteria in considering a location for bus stops is locating them in pairs on opposite sides of the road. The Proposed Scheme achieves this using the Kilmore Road junction to provide pedestrian crossing facilities. These bus stops have been specifically located downstream of the Kilmore Road junction to optimise junction interaction for adaptive bus signalling measures resulting in a lower impact on speed and capacity as well as increased safety for passengers (crossing the road behind the bus, facing oncoming traffic).

Thus, relocating the bus stop to 302/300 Malahide Road would potentially require a mid-block pedestrian crossing and modifications to the outbound bus stop location. The other potentially prohibitive challenge for siting the bus stop at 302/300 Malahide Road would be physically installing the bus stop platform between vehicular driveways for properties at this location. The submissions have proposed to use the larger island as per Figure 34 in Appendix A4.1 which notes a 25m typical bus platform length. This arrangement will be very challenging to be accommodated at 302/300 Malahide Road without impacting vehicular access to properties. The location of the bus stop as set out in the Proposed Scheme does not conflict with any existing driveway entrances.

For these reasons, the location of the bus stop in the Proposed Scheme, as shown in Figure 2.1.10, is considered to be the optimum location when assessed against the key bus stop review criteria listed above and deemed to provide better alignment to the scheme objectives.”

35. A second statutory consultation took place in June 2023, whereby the public were given an opportunity to make submissions on the Response Document.

36. A further submission was made to the board by the residents of [the street concerned] dated 3rd July 2023, which included the following:

“To:

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902
3rd July 2023

RE: BusConnects Clongriffin to City Centre Core Bus Corridor Scheme, County Dublin
Case Numbers: ABP-313182-22 / ABP-313279-22

We appreciate the opportunity to comment further on the NTA's response to our submission. We are disappointed that the NTA has not responded fully to our concerns, and implore An

Bord Pleanála to make clear instructions to the NTA regarding the scheme in line with our concerns set out below.

There are three major points that we want to make in this response - first, the history of our engagement with the NTA and our frustration that our most serious concerns are being ignored; second, to reiterate the impact that the plans will have on the local community, which was not addressed in the NTA response; and third, to reiterate the impact that the plans will have on us as residents, which was not addressed in the NTA's response.

1. Engagement with NTA

The residents of [the street concerned] have been involved in discussions about the BusConnects project throughout the lifetime of the project and have engaged with the NTA in good faith, hoping that our concerns would be listened to.

A representative of the residents (Aine Kelly) attended the first community forum event on 11th December 2018, where she outlined our objections to the proposed narrowing of the footpath as part of the initial design. She spoke personally with the NTA representatives Hugh Creegan, John Fleming and Con Kehely, ensuring that they were aware at the earliest opportunity of the unique vulnerability of our homes, which open directly onto the footpath. One of the 3 action points listed in the Community Forum Report was to review the footpath width outside the cottages.

She attended the next Community Forum Event on 11th September 2019, again to highlight the potential compromise of safety and privacy resulting from the project design that are unique to our homes. Two of the 3 action items from that event listed in the Community Forum Report were to (i) review pedestrian arrangements and (ii) to review enforcement requirements along the route, both of which pertain to our concerns. We were pleased that the NTA responded to our concerns by abandoning the proposed footpath narrowing, taking this as an indication that they understood the implications of such a proposal and that they were willing to engage with us in good faith.

At no stage during these discussions was the insertion of a bus stop directly outside the properties, which necessitates a narrowing of the footpath in front of numbers 5 and 6 [the street concerned], mentioned or featured. This change to the design only appeared in the final plans submitted to An Bord Pleanála in early 2022. This in itself was very disappointing, given the efforts we expended over the previous 4 years to ensure that the NTA staff were aware of our concerns about the risks of poor project design to our homes. We feel that our good faith and openness to discussion and communication has not been matched by the NTA.

2. Impact on local community

We have clearly articulated in our original submission that the proposal to remove the 2 existing bus stops and replace them with a single stop at [the street concerned] will result in an inferior passenger experience for all bus users and in a reduced amenity for the entire catchment between Artane roundabout and Maypark.

Because of the very confined space available on the footpath at [the street concerned], it is impossible to include a bus shelter and seat, both of which are available at the existing stops. The accessibility for wheelchair users and parents with young children in buggies will be compromised. Due to the demographic of the area, there are many older people and people with mobility issues using the bus service. They may not be able to continue to do so if the only nearby bus stop has no amenity to rest and to shelter from weather. Please see the photographs below that illustrate this point. We need hardly add that the solution to this issue is not to attempt to shoehorn in a bus shelter at the proposed site, as the impact on the quality of life of residents would be unthinkable.

Furthermore, the NTA does not seem to understand the catchment area and usage of the bus stops. There is a laneway to the rear of the existing stop at Killester Avenue, connecting through to Craigford Ave and Drive, through which the local Killester (Craigford, Killester Park) residents access the bus stop. This community constitutes a large portion of the existing catchment for the existing stop at Killester Avenue. There is no existing or proposed permeability on the western side of Malahide Road into St. David's Wood and Pinebrook estates, other than at the junction with Kilmore Road (Pinebrook) and Killester Avenue (St. David's Wood). The omission of the existing bus stops at Killester Avenue and Danieli Road therefore provides a lesser service even for those communities, and locating a bus stop outside [the street concerned] would not improve the service to the western side of Malahide Road.

The NTA submission fails to address the loss in service for the communities at St. Brigid's and Brookwood, which are currently using the Danieli Road stop.

If all those parts of the catchment were to congregate at the proposed stop outside nos. 5 & 6 [the street concerned] Lower, much more pressure is put on a bus stop of inferior design,

therefore increasing the negative impact on the residents of [the street concerned], as outlined below.

The distances between bus stops as proposed are at the longest distance in the entire scheme (450m), whereas other stops remain as close together as 250m. Existing distances between stops are 350m and 375m, with the only distance less than 250m between Artane Roundabout and Danieli Road - suggesting an adjustment in this part of the scheme, rather than outside [the street concerned].

3. Impact on residents of [the street concerned]

Most seriously for us, the NTA has made absolutely no attempt in its response to address the most grave concerns of the residents of the cottages, namely the impact of this bus stop proposal on our safety and privacy.

Both points were made in our submission, but the NTA failed to even list privacy as a point to respond to, in contrast to submissions from other residents along the route, where they explicitly list privacy as a concern (e.g. Mornington Park, Ayrfield Drive). It is hard to understand why our, and only our, concerns about privacy were ignored, especially when it is obvious on examination of the scheme design that we are the people whose privacy is most seriously impacted by the project design.

Given that the NTA has not addressed this issue in any way, we include below individual statements from households detailing exactly how this proposal will impact on our safety and privacy.

We also show photographs giving examples of what buses stopping outside the doors of numbers 5 and 6, and thus backing up north of number 6, would look like for residents and what we would all have to live with on a constant basis.

3. 1. Effects of congregation outside our houses

Placing a bus stop in front of the terrace at [the street concerned] will mean passengers congregating outside our homes. See an example below from a bus stop in Ringsend (stop 392), outside commercial premises rather than private homes, which shows that people waiting for buses naturally spread out along the wall to their rear. There is no doubt that this would happen outside our homes if this bus stop was positioned according to the current plans, with the consequent impact on privacy, access and safety.

Note that the image below shows only 10 passengers waiting. As pointed out above, it is likely that much larger numbers would congregate during rush hour in the mornings (for work) and in the evenings (for city centre evening activities) or before large events (match day, see below).

See below for example, just yesterday, 2nd July 2023, a crowd of people waiting at the Killester Avenue bus stop 1220 en route to a match. If this happened directly outside our doors and windows because the NTA were not willing to listen to our concerns and An Bord Pleanála did not clearly instruct the NTA to revise their plans, it would be an egregious breach of trust and a dereliction of duty of care to private citizens on the part of two national authorities.

If a bin is placed alongside the proposed bus stop, it is certain that dumping will occur. See 3 examples below from nearby Maryfield Crescent, Pinebrook Drive stop 4790 and Kilmore Road stop 1220. This dumping would therefore be right outside our homes. If however no bins were provided, there would be additional littering (cigarette butts, drinks bottles and cans, general trash) at the bus stop too, as people waiting will be more likely to litter.

Our houses are already vulnerable, as all windows are to the footpath and at ground floor. Due to the lack of front gardens, we have no measures available to us to protect us further that wouldn't affect daylight, ventilation and views from our homes. Most rooms in the old houses are single aspect and rely solely on their only window onto Malahide Road for air, light and views. Even without the presence of a bus stop, we experience disturbing behaviour from passers-by on a daily basis: People sitting on window sills, unaware of the fact that these are our bedrooms and living rooms. Teenagers banging with their hands against every single window as they pass by. People leaving empty pint glasses (from pub opposite), drinks bottles and trash on our window sills. People spilling entire drinks against our windows. Dogs being let to pee against our doors and walls.

With an increase in frequency of use, and an increase in time spent waiting at a bus stop outside our houses, this behaviour is bound to increase, especially late in the evening when passengers are waiting to go out in town, or after the pub closes.

3.2 Additional risk due to narrowing of footpaths

In addition to this lack of privacy, risk of littering, antisocial behaviour, blocking of windows and doors, the design necessitates a narrowing of the footpath to accommodate a cycle lane to the rear of the bus stop, and a right-turn cycle waiting lane at the junction with Kilmore Road. This creates permanent bottlenecks on the footpaths created at the proposed bus stop

outside [specified addresses], and creates an additional safety concern for residents entering and leaving their homes due to the speed of cyclists travelling on a continuous cycle lane. It is almost inevitable that accidents between cyclists and vulnerable pedestrians (elderly or children) will occur.

3.3. Vehicular access

Furthermore, existing vehicular access to our homes will be compromised, in terms of access and short term parking for carers, deliveries, emergency services etc to our homes from the front. Some of the houses do not have vehicular access from the rear lane, and the elderly residents are relying on front door access for these services. Likewise, the impact on access to both the north and south gates, which give vehicular access to the rear of our homes via a lane, has not been adequately addressed. With the expected frequency of use of both the bus and cycle lanes, manual operation of those gates (while the cars would be blocking both those lanes, as well as the footpath) is not feasible.

3.4. Damage to building fabric

We are aware of the damage the existing footpath design is causing to our properties. The NTA has swept away our comments regarding the inadequate drainage along the houses and impact sound due to bad detailing, arguing that their design would not worsen the situation, and arguing that a legacy issue can remain as is. This is an insufficient response - the aim of a national authority cannot be to merely maintain bad design from 20 years ago, but must strive to improve the design in line with current best practice, especially since the scheme requires the relaying of the entire stretch of footpath.

We must insist that the NTA be instructed that in the detail design, all rainwater discharge from the terraces must be discharged directly into surface water drainage, with french drains along the length of the terrace, and no direct contact between concrete footpaths and masonry walls, to avoid transfer of impact sound.

Each of the above points has been made in detail in our original submission and we reiterate them here to highlight that they were not addressed by the NTA in their response. We must trust that An Bord Pleanála will make the correct decision to instruct the NTA to omit any bus stop outside [the street concerned], and to fully address all of our concerns as the most vulnerable parties to the scheme along the entire stretch."

37. The submission includes the following personal statement from the applicant herself:

"RE: Objection to Application for Approval of a Proposed Road - CLONGRIFFIN TO CITY CENTRE CORE

BUS CORRIDOR SCHEME - at [the street concerned]

I live in [address] and am writing on behalf of myself and my partner Peter Prendergast.

I grew up in Artane, and bought my house in 2003 so that I could live in the area close to my parents, who needed help as they aged. Over the 20 years I have lived here I have worked to create a safe and comfortable home for myself and my family, and we have never intended to move from our home. That safety and comfort is threatened by the proposal to place a bus stop directly on the footpath outside of our home and that of our neighbours in number 6, a couple in their 80's. Below in Figure 1, is a photograph of the house, showing that the front door, 3 front windows, and the side entrance door, which we use on a daily basis, open directly onto the footpath where the bus stop is proposed to be situated. The windows open from the living room, a bedroom and a sitting room.

There are several aspects of this proposal that concern me deeply. First, the plans show that in order to accommodate the cycle lane into the design at this point of the route, the NTA proposes to create a concrete 'island' for waiting passengers to stand on, and to swerve the cycle lane to the rear of this island, thereby narrowing the footpath directly in front of my front door and side door. This will bring cycle traffic, including electric bicycles that can reach speeds of up to 45 km/hr, within 1.5 metres of my front door. The approximate position of the east edge of this cycle lane is at the gully pictured in Figure 2 below. I'm sure you can visualise the significant safety hazard this poses to us as we enter and leave our home.

Second, bus stops mean waiting passengers. There is a big difference between normal foot traffic passing outside the house and having all the local residents of the catchment area standing outside the house in order to use the bus service. Ever since this proposal has been mooted I have been counting the number of passengers who congregate at the existing bus stops at Killester Avenue and Danieli Road. On busy mornings there can be upwards of 20 people waiting at any given time. Assuming that passenger numbers will increase as a result of the BusConnects project, even if frequency of service increases, that means potentially over 40 people waiting at peak times at the new proposed stop, which is intended to replace the 2 existing bus stops. The proposed concrete island cannot accommodate these numbers, especially if you factor in wheelchair users or people waiting with buggies. It is inevitable that waiting passengers will congregate directly outside the front wall of the house,

physically blocking the doors and windows, including blocking light through the windows. Imagine this on wet mornings, as people shelter at the wall with their umbrellas. This is especially pertinent given that there will be no bus shelter and thus no protection from weather in this arrangement due to the lack of space. Only a pole and digital display is proposed. We do not know if a bin will be placed here. If no bin is provided, there will be litter strewn on the ground or on our window sills. If a bin is provided, dumping will result, and it will be a potential fire hazard (other bins locally have been set on fire either purposefully or accidentally due to smouldering cigarettes). Neither is an attractive prospect for the residents and no-one would wish to have this directly outside their front door.

The prospect of large numbers of people congregating directly in front of our home 24 hours a day (since a 24 hour bus service is proposed) is, quite simply, frightening. There is a pub, [named], located across the road; thus the potential for antisocial behaviour as people wait late at night to catch the bus after the pub closes is clear. I do not relish the prospect of myself and my family pushing our way through crowds of people to enter or leave the house, all hours of the day and night, for the rest of our lives. I enclose photographs of the view through my doors and windows in Figures 3 and 4. The impact this will have on safety and privacy is obvious. Waiting passengers will see straight into our house as we open the front door. We will not be able to open the windows without compromising privacy. Waiting passengers will be able to peer inside our windows and we will be exposed to the increased noise of conversation, cigarette smoke, blocking of light, potential for littering etc. We have no front garden and there is nothing we can do to protect our privacy except to close the curtains and live constantly under artificial light. This is unacceptable.

I am pleading with you to understand the position in which the NTA is placing myself, my family and my neighbours, and the stress and worry this has caused since we became aware of this plan. There are ample alternatives available to the NTA - they have not provided a reasonable rationale not to retain either or both of the existing bus stops at Killester Avenue and Danieli Road, both of which are situated on wide pathways that enable a full amenity with access and bus shelter for all the local residents to be maintained. I implore you to direct the NTA not to place a bus stop outside my home or that of any of my neighbours in [the street concerned]. We are relying on you to protect our safety, privacy, comfort and enjoyment of our own homes.

Yours sincerely,

Aine Kelly

Peter Prendergast"

38. I am not generally a huge fan of putting photos in judgments on the perhaps debatable ground that such a practice might potentially reduce the pressure to make the written word do the heavy lifting. But my prejudices in that regard are being strongly challenged in the present case because the pictures do tell a story. If I had had them in linkable form I would certainly have considered adding such a link for illumination.

39. The picture of on p. 6 of the submission shows about 13 people gathered on a match day at one of the stops which is going to be removed and replaced by the bus stop outside the applicant's house. Even if they were no more than usually high-spirited for a match-going crowd, one can only imagine the impact on the applicant when such a congregation descends on a narrow footpath directly in front of her window.

40. The picture on p. 7 shows a passer-by oafishly squatting on the windowsill of one of the houses in the terrace, as viewed from inside the bedroom window that looks out onto the street. Not necessarily a vista that stirs up warm philanthropic feelings towards one's fellow biped. More probably it might induce one to associate with Sartre's view of « les autres » in his 1944 play, *Huis clos*. Admittedly such scenarios could happen anyway but one might imagine that they would only be exacerbated by the erection of a bus stop as a magnet for such behaviour. The concept of hostile architecture gets a bad press but it has a useful role in some situations, and one wonders whether this is one of them, for example if the outside sills were to be treated with bolts to deter the inconsiderate hordes from sitting down. That's just a comment in passing because any such hostile design would have to be progressed separately by homeowners, subject to any planning requirements.

41. The photo on p. 12 shows the significant effect of just one person standing outside the applicant's living room window, creating an eerie, looming, presence. The critical point there for present purposes is that passers-by come and go. But those waiting for a bus to arrive have little choice but to be stationary. If only one person can block out massive amounts of light and create an ominous view for the applicant in her living room, then obviously such problems can only be multiplied by the proposed development.

42. The deadline for further submission in relation to the NTA's response document was 5th July 2023.

43. The board's Inspector Ms Sarah Lynch prepared a Report dated 9th August 2023, recommended that approval be granted for the Clongriffin Scheme. Ms Lynch prepared another report, dated 16th November 2023, relating to the CPO.

44. The Clongriffin Scheme, and the associated CPO, were approved by the board at a meeting on 20th December 2023. The board direction is dated 4th January 2024, and the board order approving the Scheme, subject to a schedule of 20 conditions, is dated 8th January 2024.

45. On 24th January 2024, the board published a newspaper notice regarding the approval of the development consent application in accordance with s. 51(6C)(a) of the Roads Act 1993.

46. On 1st February 2024, the NTA published a newspaper notice of the confirmation of the CPO in accordance with s. 78 of the 1966 Act.

47. A further notice of the confirmation was sent to every person who had an interest in the land in the CPO who had made an objection including the applicant.

48. On the 22nd of February 2024, the CPO became operative. Furthermore, the Operative Date Notice was sent in accordance with s. 78(5) of the 1966 Act to every person on whom a notice was served by them of the NTA's intention to submit the order to the board for confirmation including the applicant.

Procedural history

49. The proceedings issued on 28th February 2024 by the filing of the statement of grounds and grounding affidavit.

50. The matter was first mentioned on 4th March 2024 when I noted that the application was moved. I gave liberty to amend the statement of grounds within 2 weeks to add a more specific relief, and added the NTA as a notice party. The applicant was directed to put the board and NTA on notice of the leave application within 1 week and the matter was adjourned to 8th April 2024.

51. An amended statement of grounds was delivered on 7th March 2024. On the following day I fixed a date for the hearing of the leave application on notice. All papers were served by the applicant on 28th March 2024.

52. On 8th March 2024, I permitted the notice party to file an affidavit and set out the timeline for the exchange of legal submissions as well as indicating a date for the hearing of the contested leave application which after some exchange of correspondence was listed for 11th June 2024.

53. On 15th April 2024, an Affidavit of Aidan Gallagher for the NTA was sworn and served. It was filed on 16th April 2024.

54. Written submissions from the applicant, board and NTA were delivered dated 29th April and 13th and 14th May 2024 respectively. The matter was called over on 10th June 2024.

55. The leave application on notice was heard on 11th June 2024 when judgment was reserved.

Relief sought

56. The relief sought in the amended statement of grounds is as follows:

"(D) Relief Sought : Judicial Review and Quashing of the Decision of An Bord Pleanala Reference No. ABP-313182-22 dated 9th day of January 2024."

57. The board's interpretation of this is:

"Whereas there may be pleading points, the Board believes it is acceptably clear from the Amended Statement of Grounds that the Applicant is seeking to quash the approval by the Board on 8th January 2024 (under ref. ABP-313182-22), under section 51 of the Roads Act 1993 of the proposed road development consisting of the construction of the Clongriffin to City Centre Bus Corridor Scheme ('the Section 51 Approval')."

Grounds of challenge

58. The pleaded grounds of challenge are as follows:

"Failure by the NTA to follow Procedure. There was no Notification to the Applicant or any of the affected Residents by the NTA of the proposed new Bus Stop arrangement, and there was a material misstatement of the Consultation Procedure in the Application Documents from the NTA. Neither the Applicant nor any of the Residents received any formal Notification by Letter as impacted parties at the Third Consultation which the NTA states was issued in November 2020. Consequently, neither the Applicant nor any of the Residents were given the opportunity for one-to-one consultations as was their right as affected landowners.

Breach of Constitutional Property Rights under the Irish Constitution per Article 40.3 and 43 with regard to Applicants Constitutional Right to quiet enjoyment of one's Property and the expectation that a Property owning Citizen would not be disproportionately affected by Planning Decisions of An Bord Pleanala or NTA Schemes.

Detailed and rational residents' observations were not responded to in full by the NTA or ABP internal Reports and the Final Decision specifically in relation to details highlighting the Planning History and the justification for, location of, and the detailed design of the proposed Bus Stop outside [the property concerned].

Such failings include but are not limited to the foregoing :-

- (1) Lack of careful consideration of proposed removal of the existing Two fully functional Sheltered Bus Stops and their replacement with merely one metal Bus Stop Sign with no Shelter. There is no evidence of any such careful consideration in the relevant NTA documentation.
 - (2) Bus Stop No. 1219 was simply omitted prior to Consultation 1 (without any replacement) and no justification; Bus Stop No. 1220 was removed prior to Consultation 2 (without replacement), and no justification. The proposed Bus Stop to be located at [the property concerned] was introduced at Consultation 3 without any justification.
 - (3) Flaw in justification for new Bus Stop at Submission of Application 'due to proximity with the new Kilmore Road Stop' (Preliminary Design Report, Appendix H, Page 44 of 52, Location Review), which is a clear post-rationalisation of the planning process. It is misleading, and appears to be used to justify the 'amalgamation' of a Bus Stop. 'Where existing Bus Stops on a route are in close proximity to each other they may be amalgamated into a single stop. This must be assessed on a case-by-case basis.' (Appendix A4.1 – Preliminary Design Guidance Booklet for BusConnects Core Bus Corridor, section 11. Bus stops).
 - (4) Justification for new Bus Stop providing 'greater permeability' is not backed up with details – the Applicant and Residents' observations clearly set out the flaws in this argument (Sections 3. & 3.1.).
 - (5) Alternative locations were demonstrated where the NTA preferred layout could have been applied and there was an entirely insufficient response to such observations of the Applicant and the Residents.
 - (6) Proposed substitute Bus Stop for two existing Bus Shelters was a late-stage design change severely impacting Private Residences such as that of the Applicant at [the property concerned] and was not communicated to the disproportionately affected Property owners such as the Applicant.
 - (7) Contravention of the proposal with NTA internal design guidelines in the location and design of the substitute Bus Stop outside the Cottages was not addressed in any way despite being highlighted by the observations of the Applicant and Residents.
 - (8) Insufficient footway width to accommodate the substitute Bus Stop outside [the street concerned].
 - (9) No reasonable space for the substitute Bus Shelter.
 - (10) Insufficient sizing of the substitute Bus Stop for expected passenger numbers and Bus travel demand.
 - (11) Reduced width of cycle path behind said Bus Stop.
 - (12) Non application of ' Shared Bus Stop landing zone arrangement (Urban Centres)' design for said Bus Stop.
 - (13) Non-provision of a Bus Shelter for said substitute Bus Stop in contravention of design standards.
- Disproportionate impact of Proposal on Residents and Residential Property in breach of constitutional rights :
- (14) The proposed substitute Bus Stop for two other fully operational Bus Shelter Stops is the only Bus Stop in front of any houses without front gardens along the entire Scheme, and indeed the only new Bus Stop proposed in front of any residential property.
 - (15) EIA does not account for impact on Residents at [the street concerned] including increased physical danger through accidents due to narrowing of the existing footpath to accommodate cycle lane and the impediment to safe entrance and exit at the Front Doors of disproportionately affected Residential Properties due to the congregation of waiting passengers at a 24hr Bus Stop.
Increased danger of crime being committed against Persons or Properties due to congregation of waiting passengers at a 24 hour Bus Stop.
Reduced enjoyment of the Applicants and Residents Property and Privacy.
 - (16) No impact assessment provided on expected long-term very negative impact on the Applicant and Residents of [the street concerned] Malahide Road.
 - (17) [the street concerned] are the only ' Other Structures of Architectural Heritage Interest' (EIA, 16.4.4) actually negatively affected by the entire Bus Connects Scheme.
 - (18) Residential amenities of the Properties further reduced after decades of incremental negative impacts of poor infrastructure planning.
 - (19) Loss of Property Values of Applicant and Residents.
 - (20) Existing antisocial behaviour by passers-by likely to be aggravated by increased times spent waiting at bus stop and no An Garda Siochana Assessment was provided."

59. The NTA has helpfully sought to translate these complaints into more legally pertinent language, and has proposed that the points sought to be made by the applicant can be reflected in the following core grounds:

- “(i) the decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because of the failure of the National Transport Authority to notify affected residents of the proposed bus stop arrangement in respect of the bus stop to be located at approximate chainage A6575 outside [the applicant’s property] and failed to follow the procedures explained in the Public Consultation Submission Report;
- (ii) the decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because it breaches the Applicant’s right to quiet enjoyment of their property pursuant to Article 40.3 and 43 of the Constitution; and,
- (iii) the decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because the National Transport Authority and An Bord Pleanála did not respond in full to the submissions made by residents in respect of the bus stop to be located at approximate chainage A6575 outside ... [the street concerned].”

60. The board has suggested a fourth core ground:

“the Section 51 Approval constitutes a ‘Disproportionate impact of Proposal on Residents and Residential Property in breach of constitutional rights’.”

The law in relation to leave

61. The main requirements in relation to leave to apply for judicial review under *G. v. D.P.P.* [1994] 1 I.R. 374 (Finlay C.J.) as that applies to planning cases, bearing in mind the adjustments to that test required by amendments to O. 84 RSC since then and by statutory modification, were referred to in *Reid v. An Bord Pleanála (No. 5)* [2022] IEHC 687, [2022] 12 JIC 0902 (Unreported, High Court, 9th December, 2022) and more recently in *Duffy v. Clare County Council* [2023] IEHC 430, [2023] 7 JIC 2404 and in *Morehart v. Monaghan County Council* [2024] IEHC 100, [2023] 2 JIC 2601 at §23.

62. *Duffy* attempted to summarise the requirements for the grant of leave in planning cases as follows:

- (i) that the applicant has standing by way of having a sufficient interest (O. 84 r. 20(5) RSC, s. 50A(3)(b)(i) of the 2000 Act);
- (ii) that the facts averred in the affidavit would be sufficient, if proved, to support a substantial ground for the form of relief sought by way of judicial review (*G. v. D.P.P.* as modified by s. 50A(3)(a) of the 2000 Act);
- (iii) that on those facts a substantial case in law can be made that the applicant is entitled to the relief which she seeks (*G. v. D.P.P.* as modified by s. 50A(3)(a) of the 2000 Act);
- (iv) compliance with time limits, normally 8 weeks in the planning context (s. 50(6) and (7));
- (v) capacity of the applicant (as a matter of general law – only an issue in applications by unincorporated bodies);
- (vi) exhaustion of remedies, or as put in *G. v. D.P.P.*, that the only effective remedy, on the facts established by the applicant, 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, on all the facts of the case, a more appropriate method of procedure (s. 50A(3)(c) inserted by s. 22 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, which has been in force since 20th October, 2022 by virtue of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 3) Order 2022 (S.I. 523 of 2022));
- (vii) compliance with relevant procedural requirements, particularly other provisions of O. 84 RSC or the terms of High Court Practice Direction HC124 – although normally this would affect the specifics of any leave in how the reliefs and grounds should be worded, rather than whether leave should be granted at all; and
- (viii) that there are no other grounds to warrant refusal of leave on a discretionary basis (see *North East Pylon Pressure Campaign Limited & Ors v. An Bord Pleanála (No. 1)* [2016] IEHC 300; 2016 WJSC-HC 4214, [2016] 5 JIC 1215 (Unreported, High Court, 12th May, 2016), which refers to triviality or lack of good faith for example).

63. As regards the extent to which the court can determine contested factual or legal issues at the leave stage, the position was addressed in *Reid v. An Bord Pleanála (No. 5)* [2022] IEHC 687, [2022] 12 JIC 0902:

- (i) as regards jurisdictional requirements, the logic of the leave procedure, as interpreted in *G. v. D.P.P.*, is that the court must determine those issues in some form at the leave stage, albeit that, for example, a decision to extend time could be revisited later if a party that hadn't been heard comes forward with something determinative that wasn't taken into account in the original order;
- (ii) as regards to factual issues (and leaving aside the distinction between arguability and substantial grounds), *G. v. D.P.P.* implies that one starts by taking the facts averred to at their high water mark. However it is also clear that the court can have regard to facts averred to by the opposing parties, such that it may become apparent even at leave stage that the necessary factual basis for any given point may not arise; and
- (iii) as regards legal issues, the wording of *G. v. D.P.P.* implies that frequently any legal contention will only be finally determined at the substantive hearing. But there are some exceptions to that.

64. As regards whether to determine legal issues at the leave stage:

- (i) Where the law has been clarified already (in the sense of having been set out in a previous judicial decision: *McNamara v. An Bord Pleanála* [1996] IEHC 60, 1995 WJSC-HC 1122, [1996] 2 I.L.R.M.339, [1996] 5 JIC 1001, [1995] 1 JIC 2403 Carroll J.), the court can simply apply that clear law to the facts. A "clear" law for this purpose includes law as clarified by the High Court or the Court of Appeal as well as purely by the Supreme Court, assuming that the party arguing for an alternative position doesn't put up any plausible argument as to why the position as so set out is wrong (as outlined in *Reid (No. 5)*). And even a settled authority (even occasionally a Supreme Court decision if one dare say so) may need to be distinguished or clarified over time as statute law changes or as new situations arise in a complex society. Otherwise the law would fossilise and the necessary evolution of law as a practical and living instrument of human government would grind to a halt.
- (ii) If the law has not been clarified, but is not particularly complex and is readily able to be clarified with some certainty in the limited forum of a leave hearing, the court can decide such issues at leave stage, rather than parking them for a later full trial. The necessity for this to be a process that can be readily conducted within the limited confines of a leave hearing is an important feature. Considerations of practicality and jealous husbandry of limited judicial resources strongly militate against turning any and every leave application into something that would rival a full blown substantive hearing with an equivalent level of argument.
- (iii) If the law has not been already clarified (or if it has been clarified, but the applicant can advance substantial grounds for distinguishing, clarifying, nuancing or arguing for the need for evolution in that law), and if, even bearing in mind the perspective that a point that seems complex initially might appear more straightforward in the light of submissions of the opposing parties, the precise legal position can't be determined to the appropriate level of certainty within the limited confines of a leave hearing, then the court can grant leave provided that sufficient facts are averred to in order to provide a basis for relief having regard to the legal proposition being advanced, and that any other procedural and jurisdictional requirements are met. In such a case any determination of the merits of that legal argument will be a matter for the substantive hearing (see *Kenny v. An Bord Pleanála (No. 1)* [2000] IEHC 146, [2001] I.R. 565, [2000] 1 I.L.R.M. 68, [2000] 12 JIC 1502 at para. 7, McKechnie J., *Arklow Holidays Limited v. An Bord Pleanála & Others* [2006] IEHC 15, [2006] 1 JIC 1802 at para. 3.9, Clarke J.).

The law in relation to applications by litigants in person

65. As regards how the court should address applications, including leave applications, made by personal litigants, the position is as follows:

- (i) A court may extend a degree of latitude to a lay litigant to ensure that she is not unduly disadvantaged by a lack of being conversant with procedural requirements: *C.O'S. & Anor v. Doyle & Others* [2013] IESC 60, [2014] 1 I.R. 556 [2014] 1 I.L.R.M. 424, [2013] 12 JIC 1907 (MacMenamin J.), *Talbot v. Hermitage Golf Club* [2014] IESC 57, [2014] 10 JIC 0901 at [48] per Charleton J., *Flynn v. Desmond* [2015] IECA 34, [2015] 2 JIC 2604 at [19] per Mahon J. (Hogan and Peart JJ. concurring), Delany and McGrath on Civil Procedure (5th Ed., Round Hall, 2023) at [31-140] and the case law cited. This can take the form of either expressly outlining such requirements for the information of the litigant concerned or affording latitude in endeavouring to facilitate such a litigant in framing her papers and submissions in

such a way as to bring out the real issues in dispute, or both. Such an exercise does not inherently constitute unfair prejudice to other parties and is instead aimed at arriving at a more level playing field. But it should not be taken to extremes whereby unfair prejudice could arise.

- (ii) Such latitude does not extend to the application of different legal tests. In principle a litigant in person is subject to the same substantive and procedural legal rules as other litigants: *Knowles v. Governor of Limerick Prison* [2016] IEHC 33, [2016] 1 JIC 2503, *Burke v. O'Halloran* [2009] IEHC 343, [2009] 3 I.R. 809, [2009] 7 JIC 1002 (Clarke J.), *O'Neill v. An Bord Pleanála* [2020] IEHC 356, [2020] 7 JIC 2201 at §29 and §30 (McDonald J.), *O'Connell v. Financial Services and Pension Ombudsman* [2020] IEHC 559, [2020] 11 JIC 0501 at §7 to §12 (O'Connor J.), *Murphy v. Garda Síochána Ombudsman Commission & Others* [2021] IECA 26, [2021] 2 JIC 0401 at [51] (Collins J).

Whether leave should be granted here

66. Applying the foregoing to the leave applications here, the position is as follows:

- (i) sufficient interest – this was not hugely disputed;
- (ii) that the facts averred in the affidavit would be sufficient, if proved, to support a substantial ground – that issue was not really severable from whether there is a substantial ground in principle;
- (iii) that on those facts a substantial case in law can be made that the applicant is entitled to the relief which she seeks – that is discussed further below;
- (iv) compliance with time limits – that was not significantly disputed;
- (v) capacity of the applicant – not an issue;
- (vi) exhaustion of remedies – not an issue;
- (vii) compliance with relevant procedural requirements, e.g., O. 84 RSC, Practice Direction HC124 – there was a certain informality or non-compliance in the papers but that is capable of being addressed by directions if the matter were to proceed; and
- (viii) discretion – that wasn't a significant independent issue.

67. We can then turn to the issue of substantial grounds.

Core ground 1 – failure to give notice of bus stop location

68. Core ground 1 is:

"the decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because of the failure of the National Transport Authority to notify affected residents of the proposed bus stop arrangement in respect of the bus stop to be located at approximate chainage A6575 outside [the property concerned] and failed to follow the procedures explained in the Public Consultation Submission Report;"

69. The parties' positions as recorded in the statement of case are summarised as follows:

"Core Ground No. 1

The Applicant

The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because of the failure of the National Transport Authority to notify affected residents of the proposed bus stop arrangement in respect of the bus stop to be located at approximate chainage A6575 outside [the properties concerned] and failed to follow the procedures explained in the Public Consultation Submission Report;

The Board

Core Ground No. 1 does not meet the threshold for leave. It is a complaint directed at the third round of pre-application non-statutory public consultation in November 2020 by the Notice Party (NTA). It does not meet the threshold for leave because it does not go to the validity of the Board's Decision at all. It relates solely to a non-statutory consultation carried out by the NTA that occurred in November 2020 before it made the application for approval to the Board (which was on 1st April 2022). Core Ground No. 1 does not postulate a basis for an entitlement to relief by reference to some identified legal provision or doctrine and an explanation as to how that gives rise to an entitlement to the remedy sought. It discloses no route-map from the complaint made to the relief claimed.

The National Transport Authority

Core Ground No. 1 is directed at the non-statutory consultation process which occurred as part of the design process for the Clongriffin to City Centre Bus Corridor Scheme and prior to the lodgement of an application for approval to the Board pursuant to section 51 of the Roads Act, 1993 (as amended). The Applicant cannot impugn the Section 51 Approval by reference to any issue raised as part of Core Ground 1, as all her complaints relate to the

non-statutory consultation process which occurred prior to the submission of the application for approval to the Board. The complaints raised by the Applicant do not go to the validity of the decision of the Board and are not a basis upon which any relief could be granted.

70. As a domestic law ground for the actual relief claimed, this complaint is unfounded because it relates to the pre-application procedure. Any alleged shortcomings in the NTA's actions in its non-statutory pre-application consultations do not give rise to a right of action against the board and do not affect the validity of the decision on the application that was ultimately made."

71. The applicant sought to introduce the Aarhus convention in support of core ground 1, by exhibiting the UNECE document, *The Aarhus Convention: An Implementation Guide 2nd ed* (Geneva, UN, 2014).

72. Article 6 of the Aarhus convention provides:

"Article 6

PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) The proposed activity and the application on which a decision will be taken;

(b) The nature of possible decisions or the draft decision;

(c) The public authority responsible for making the decision;

(d) The envisaged procedure, including, as and when this information can be provided:

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate;

(iii) The time and venue of any envisaged public hearing;

(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of

comments or questions; and

(vi) An indication of what environmental information relevant to the proposed activity is available; and

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- (b) A description of the significant effects of the proposed activity on the environment;
- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) A non-technical summary of the above;
- (e) An outline of the main alternatives studied by the applicant; and
- (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied *mutatis mutandis*, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment."

73. The applicant relies in particular on art. 6(4) to the effect that early, open and effective public participation is required in relation to decision to which the article applies.

74. This issue isn't properly pleaded and the applicant didn't seek an amendment. Had she done so, I don't think such a plea if allowed to be added would have constituted a substantial ground for *certiorari* given that the non-statutory process was followed by a statutory one which is not said to be in breach of the Aarhus Convention. That said, one could see an interesting line of argument that the State has failed to transpose art. 6(4) adequately, but that would have involved joining State respondents and seeking declaratory relief. That wasn't attempted. In particular, there wasn't any proposal to amend the proceedings to add a systemic challenge to the architecture of the Roads Act 1993 for failing to require some more specific kind of pre-application consultation.

75. The NTA also made the point that the Aarhus Convention is only part of Irish law to the extent that it is part of EU law, and the EU has only implemented it with respect to the formal planning process by means of the EIA directive. Inferentially therefore, parts of the Aarhus convention that are not part of EU law are not justiciable. I don't need to decide on the merits of that defence now because we don't get to that point, but I can note in passing that the CJEU has declared there to be a fairly wide obligation to interpret national law in line with Aarhus where possible.

76. The conclusion on core ground 1 is that the applicant has not demonstrated substantial grounds for the relief actually sought and has not sought to amend the pleadings to add a relief that would more properly relate to this ground.

Core ground 2 – property rights

77. Core ground 2 is:

"The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because it breaches the Applicant's right to quiet enjoyment of her property pursuant to Article 40.3 and 43 of the Constitution."

78. The parties' positions as recorded in the statement of case are summarised as follows:

"Core Ground No. 2

The Applicant

The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because it breaches the Applicant's right to quiet enjoyment of their property pursuant to Article 40.3 and 43 of the Constitution; and,

The Board

Core Ground No.2 does not meet the threshold for leave. It discloses no route-map from the complaint made to the relief claimed. The necessary factual basis for this point does not arise. No breach of the Applicant's property rights protected under Article 40.3 and 43 of the

Constitution has been identified. The Board Order for the Section 51 Approval (at pages 8-9) records that the Board considered, for stated reasons, that the proposed development would be in accordance with the proper planning and sustainable development of the area. Insofar as constitutional rights are concerned, proper planning and sustainable development is the prior and superior concept, with the primary process being that the Board has to form a judgement as to what is required by proper planning and sustainable development and give reasons for that. That was done here. If such a reasoned decision impacts on property rights, that is not in itself unjust. As regards Core Ground No.2, there is also no engagement with how a disproportionate as opposed to proportionate interference is said to arise. At Core Ground No.2, the Applicant has not established to the substantial grounds threshold that the Section 51 Approval by the Board involves an unjust attack on the Applicant's property rights or any failure to vindicate them.

Further, the Applicant has not established to the substantial grounds threshold that the Section 51 Approval involves a disproportionate impact on the Applicant and on residents and residential property in breach of constitutional rights (see e.g., the Table below §34 in the Board's submissions). It is also not open to the Applicant to rely on third party property rights and/or rules to protect those rights to invalidate the Board's Decision.

The National Transport Authority

Having not invoked any reliance on her Constitutional rights before the Board, the Applicant cannot impugn the decision by reference to those alleged rights.

Without prejudice to the foregoing, the decision of the Board does not cause any infringement of the property rights of the Applicant and where it was determined that the grant of approval for the Clongriffin to City Centre Core Bus Corridor Scheme was in accordance with the proper planning and sustainable development of the area, the Constitutional rights asserted by the Applicant are not engaged. The right of quiet enjoyment of one's property does not include a right not to have persons use the public footpath outside that property, including for the purposes of accessing public transport and the Applicant has not discharged the burden of proof of demonstrating that her rights would be infringed.

Insofar as there is any infringement of her rights (which is denied), that is proportionate having regard to the public good served by the development of important public infrastructure which forms part of the overall public transport and cycling network developed for the city of Dublin."

79. Without going through every issue raised, given the need to tie everything to the pleadings, the applicant's submission at the hearing included the following, before going on to stress the point quoted at the outset of this judgment:

"The second ground on which I apply for permission to seek judicial review is that of a breach to my constitutional property rights under the Irish Constitution per Article 40.3 and 43 with regard to a constitutional right to quiet enjoyment of one's property. Given these constitutional rights, I believe there is an expectation that a property owning citizen would not be disproportionately affected by planning decisions of An Bord Pleanála or NTA schemes. I am grossly and disproportionately affected by the decision of the NTA to place a bus stop directly outside my home, given that I have no front garden and that waiting passengers will congregate directly outside my front door and windows. The impact on residents is clearly described in the submissions to An Bord Pleanála in May 2022 and July 2023, Exhibit 13. ...

The absolute lack of concern for my rights by An Bord Pleanála and the NTA is clear from other aspects of the Inspector's Report. The Inspector sweeps away the legitimate concerns the residents have regarding safety and privacy. On page 94, point 6.166, she states that 'the cottages are located in an urban area'. This is not true. Artane is a suburban area, populated by families and older people.

I note she contradicts herself on page 70, point 6.46, where she states that bus stops should be located approximately 400 metres apart on typical suburban sections of route, dropping to approximately 250 metres in urban centres. ...

As you will note from our submission in May 2022, the current bus stop distances along the stretch of road in question are 225, 375 and 300 metres. Under the new proposal, the distances are 450 metres. I would like to point out that these are the longest distances between stops anywhere on the 6 kilometre Clongriffin to City Centre route, meaning a reduced amenity for the local community. If, as the Inspector contends on page 94, I lived in an urban area, then the bus stops should say exactly where they currently are, with distances on average of 300 metres. By agreeing with the proposed bus stop distances of 450 metres, she is effectively agreeing that we are in a suburban area yet another contradiction.

So, which is it? According to the Inspector, I live in Schrödinger's Cottage, which is simultaneously suburban and urban, depending on which argument she wants to make to justify the NTA's decisions. She also states on page 94, that there will be, I quote, 'congregation of passengers for short periods of time at the bus stop location.' This is incorrect. A 24 hour bus service is proposed. Therefore, there will be congregation of people outside my front door all day every day. Due to the fact that this bus stop is replacing two existing bus stops, there will be even greater pressure on the new proposed bus stop. Added to this, part of the rationale for BusConnects is to increase passenger numbers even further and, indeed, the only attempt at an argument for the location of the bus stop is its proximity to Kilmore Road, which may lose its current bus service, adding more people to the numbers waiting outside my door. Added to this, two of the three most used routes in the entire Dublin Bus network are the number 27 and number 15 routes, both of which will stop at this bus stop.

So her contention that there will be congregation of passengers for short periods of time does not hold water. Neither, does she or the NTA provide any data on passenger numbers or waiting times, so her contentions are entirely unproved.

She acknowledges in point 6.167, the, I quote, 'potential annoyance of the bus stop location'. I wish it was only annoyance I was concerned about."

80. Insofar as the opposing parties say that the applicant can't make this point because she didn't raise it before the board (*Coyne & Anor. v. An Bord Pleanála & Others* [2023] IEHC 412, [2023] 7 JIC 2104 *per* Holland J), they didn't press that to the extent of saying that the applicant was precluded from advancing the point merely because it wasn't made in legal language. So for leave purposes I think there was enough to render it arguable to the substantial grounds standard that the basic issue of a disproportionate interference with her rights was before the board.

81. The NTA says that the applicant already has to deal with people who may be right outside her front door, which is true up to a point, but the difference between the *status quo* and the proposed situation is that such people at present don't have an infrastructural basis to congregate in a stationary position outside her dwelling.

82. The NTA also says that the road will be further away from her front door than it is at present, but it is certainly arguable to a substantial grounds standard that that does not compensate for the other negative effects of the imposition of a bus stop at that location.

83. The critical reasoning of the board is as follows:

"6.165 The issue for consideration at this juncture is the impact to residents in terms of any loss of privacy or perceived intrusion into their privacy. I note that concerns were raised during the non-statutory consultations in relation to the footpath width at this location which were to be narrowed. The NTA resolved to retain the footpath width following consultation with the exception of a 1.5 metres pinch point as detailed above. The situation in terms of pedestrians will therefore remain as is currently. Whilst I acknowledge the residents' concerns about people sitting on their windowsills, this is not a matter that the NTA can resolve as part of the proposed scheme.

6.166 The introduction of a bus stop pole will undoubtedly give rise to people congregating at this location and may give rise to additional people movement at the front of these properties, however the cottages are located in an urban area that is heavily trafficked and the benefits of providing a high quality sustainable and active travel network within this part of the city will provide significant benefits that outweigh the congregation of passengers for short periods of time at this location.

6.167 Thus, whilst I acknowledge the potential annoyance of having a bus stop adjacent to these properties the impact to the residents of the [the street concerned] is not of such significance to warrant refusal of this significant piece of infrastructure which would benefit all residents along and within the area of the Malahide Road as a whole. I am satisfied that the applicant has investigated all reasonable alternatives and has made appropriate accommodations to protect the residential amenity of the [the street concerned]."

84. Insofar as I understood the points being made by the applicant under this heading, the complaint is one of disproportionality, which at its most basic involves a flawed assessment of the benefits of the proposed public law act versus the detrimental impact on the applicant concerned and of the reasoning to weigh the two. A decision-maker can exaggerate the benefits of the proposed decision, or minimise the detriment to an affected party, or both. Here, as I understood the applicant's position, the allegation is both. There are substantial grounds for that allegation, and in particular for the complaint that the board through adopting the inspector's report mis-states the detriment by characterising it as mere "potential annoyance", while mischaracterising the benefit as being the benefit of the scheme as a whole. But the essence of the complaint is that the benefit isn't the scheme as a whole – that could have gone ahead anyway with the existing bus stops 1219 and 1220 where they are (on broad pavements with real-time information and shelters, outside

shops and the like, not directly outside residential properties, still less ones with no gardens – arguably far superior designs to the proposed new stop). Sure, the NTA did, as Ms Lynch says, investigate reasonable alternatives as to locations, but it didn't find such alternatives to be impossible or even unduly difficult. It simply preferred the chosen solution as being somewhat better when judged by technical criteria. The issue as articulated by the board was whether the benefits of the scheme as a whole warrant the infliction of detriment on the applicant. There are substantial grounds for contending that this is a flawed approach and that the correct question is whether the marginal benefit of the chosen solution over the next best option, for example, the *status quo*, regarding bus stop location, outweighs what are contended to be severe impacts on the applicant. The argument that the board failed to make a proportional decision, either by not asking the right question or by a flawed reasoning, is an arguable proposition to a substantial grounds standard.

85. The lack of challenge to the CPO isn't a knock-out point in favour of the opposing parties because that relates to a different property right, not the peaceful enjoyment of her own home.

86. Insofar as the opposing parties predictably say that this is a merits complaint, that isn't completely wrong. But nor is it necessarily a complete answer to this specific type of issue. Like irrationality, a complaint of disproportionality inherently falls into the quasi-merits space where the court does have to engage in a degree of assessment of the factual basis of the decision. It is often said that one shouldn't merely substitute the court's own view, if hypothetically different from the decision-maker's, for the latter, and that's fine insofar as it goes. The cliché is about not "stepping into the shoes" of the decision-maker. Shoes aren't something you can just "step" into anyway, unless they are clown shoes. So it's not even a minimally elegant formulation. But let's not take it too literally – the concept that the decision is in the first instance one for the decision-maker isn't some sort of guarantee that the decision-maker's footwear confer infallibility – perhaps a secular conceit inspired by Morris West's novel *The Shoes of the Fisherman* (1963, William Morrow, New York). If the decision-maker has a binary choice, X or not-X, and if position X is found by the court to be objectively unreasonable, then the effect of that decision (even though it certainly won't be phrased along the lines that the court is substituting its own view) is to require the decision-maker to go down the not-X route. There isn't anything wrong with that. Nor is the conclusion about what is unreasonable merely the court's "own view". Choosing between reasonable alternatives is a matter for the executive or administrative body concerned, not the court. But deciding that a particular conclusion is so unreasonable that it cannot lawfully be adopted is a judicial function. That is the point I was trying to make in *Sherwin v. An Bord Pleanála* [2023] IEHC 26, [2023] 1 JIC 2701 at para. 224. I emphasise "trying" because when I said that non-X was a matter of "fact", it would in hindsight have been better to phrase that as saying that decision X was not a factual conclusion that was reasonably open. My point was not that the court should somehow generally take over factual evaluation by a decision-maker on an issue (like material contravention) that she has jurisdiction to consider, but rather that if in a given instance the facts relating to a particular issue that would normally be for an evaluative jurisdiction are so weighed in favour of one outcome that the other outcome would be unreasonable, then those facts as objectively determined by the court are decisive. An obvious example is *The State (Creedon) v. Criminal Injuries Compensation Tribunal* [1988] I.R. 51, [1989] I.L.R.M. 104, 1988 WJSC-SC 79, [1988] 3 JIC 1403, where the Supreme Court not only quashed a decision but unanimously told the tribunal what decision it was required to make on remittal – find for the judicial review applicant: "an Order of Mandamus directing the Tribunal to consider further her claim for compensation upon the basis that she is entitled to compensation". Opposing parties might try to mischaracterise that as trying on the decision-maker's shoes – but it isn't, for the reasons I have attempted to make clear. But let's not quibble about phrasing – it all comes to the same thing. The upshot in any event is that the defence in the present case that the contested issue fell within the decision-making freedom of the board on the merits is one for the trial and is not something that is sufficiently clear as to preclude there being substantial grounds for the challenge at this stage.

87. Insofar as the opposing parties say that the applicant already has to cope with passers-by at the moment, that doesn't at this stage remove the existence of substantial grounds for saying that the situation will be severely worsened by creating a focus for congregation of such persons. Insofar as the argument is that all the concerns were considered and dealt with by the NTA and the board, that's a point of defence for the trial but it isn't so clear as to negative the argument that there are substantial grounds to the contrary.

88. I can add that the applicant hasn't pleaded, or sought an amendment in relation to, a breach of property or privacy rights under the EU Charter or the ECHR, so I don't need to consider those.

89. The conclusion on core ground 2 is that the applicant has demonstrated substantial grounds to impugn the decision in the sense indicated in this judgment.

Core ground 3 - reasons

90. Core ground 3 is:

"The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because the National Transport Authority and An Bord Pleanála did not respond in full to the submissions made by residents in respect of the bus stop to be located at approximate chainage A6575 outside ... [the street concerned]."

91. The parties' positions as recorded in the statement of case are summarised as follows:

"Core Ground No. 3

The Applicant

The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because the National Transport Authority and An Bord Pleanála did not respond in full to the submissions made by residents in respect of the bus stop to be located at approximate chainage A6575 outside [the properties concerned].

The Board

Core Ground No. 3 does not meet the threshold for leave. Insofar as Core Ground No.3 comprises a complaint as to a failure to give reasons, it is discernible at this leave stage of these proceedings, that the Board did provide the main reasons for the main issues. The reasons given by the Board in the Decision were adequate and complied with the relevant legal principles on reasons and were sufficient to ensure that a person who had participated in the process and was apprised of the main issues, would know why the Board granted the Section 51 Approval and why it had not accepted the Applicant's and other residents' objections/submissions. The Inspector expressly and properly summarised and considered the Applicant's and other residents' submissions, with the Inspector evidently not accepting the submissions made/objections raised for clear and stated reasons (see e.g., the Table below §32 in the Board's submissions). The Applicant has not established to the substantial grounds threshold that the Board failed to respond / provide adequate reasons for its decision and in relation to not accepting said objections/submissions.

The National Transport Authority

The submission made by the residents of [the street concerned] was addressed by the NTA in the Response Document, in particular at Section 2.3.

The issues raised by the residents were addressed by the Board in the Inspector's Report. In particular, the NTA attention to pages 19-20, 29-33, 65, 70-75, 86, 87, 93, 94, 235, 236, 238 and 250-255 of the Inspectors Report, and those extracts which are highlighted at §§73 – 76 of the NTA's Legal Submissions, where the issues were addressed in detail. The manner in which the issues were addressed discharges the obligation to give reasons and to consider submissions made as part of the public consultation process."

92. The obligation to consider submissions involves taking them into account and giving the main reasons on the main issues: *Balscadden Road Residents Association v. An Bord Pleanála* [2020] IEHC 586, [2020] 11 JIC 2501 at §38, *O'Donnell v. An Bord Pleanála* [2023] IEHC 381, [2023] 7 JIC 0501, insofar as those cases consider caselaw including *Connolly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752, [2018] 2 I.L.R.M. 453, [2018] 7 JIC 1701 (Clarke C.J.), *Balz & Anor. v. An Bord Pleanála* [2019] IESC 90, [2020] 1 I.L.R.M. 367, [2019] 12 JIC 1202 (O'Donnell J.), *Sliabh Luachra Against Ballydesmond Windfarm Committee v. An Bord Pleanála* [2019] IEHC 888, [2019] 12 JIC 2017 (Mc Donald J.) at §38. This inherently involves taking the reasoning as a whole: *per Holland J., Monkstown Road v. An Bord Pleanála* [2022] IEHC 318, [2022] 5 JIC 3106 at §159, *Shadowmill v. An Bord Pleanála* [2023] IEHC 157, [2023] 3 JIC 3106 at §161.

93. Overall while the applicant raises complaints about reasons in relation to issues like design, architectural heritage and so forth, I think that these are generally not sufficiently major issues to warrant more reasons than are given, and insofar as they are main issues, sufficient main reasons are given, in essence that the benefits of the scheme outweigh any contrary arguments under those headings.

94. But there are substantial grounds for contend that what was a main issue was the personal impact on the dwelling, privacy and safety of a home owner without a front garden of the construction of infrastructure such that people congregate right at her front door. There is caselaw supportive of the argument that the law requires close attention to a significant if not severe impact on a single individual even in the context of important public works projects. An example is *Flannery & Others v. An Bord Pleanála* [2022] IEHC 83, [2022] 2 JIC 2504 where "the impact of the development on existing actual de facto uses on the grounds of the sites concerned was a sufficiently major point to require the provision of reasons", even where that affected a single landowner. The Supreme Court has said that "[t]he Constitution, in protecting property rights, does not encompass only property rights which are of great value. It protects such rights even when they are of modest value": *In re Health (Amendment) (No. 2) Bill 2004* [2005] 2 JIC 1601. There is potential relevance

to the perspective that while in some situations, individual interests must yield to the common good, there are lines of principle where the law protects the rights of one person, even if she is outnumbered, and thus protects an individual from injustice even when the outcome would be of benefit to the community interest, as in the *Health (Amendment) Bill* case. And finally, in the context of whether there are substantial grounds, the implicit logic of the argument might appear to be: let's not pretend that there isn't a latent gender perspective to all this that needed to be respected.

95. Are reasons provided? That is open to debate. Certainly there are substantial grounds to contend not, when judged against the actual concerns of the applicant. Characterising a situation whereby she would live in permanent anticipatory anxiety of having strangers standing beside her any time she opens her front door as merely being "annoyance" could arguably, to a substantial grounds threshold, be seen as a failure to give valid reasons.

96. As regards reasons viewed from an EU law perspective, the CJEU has recently confirmed that the obligation to state the reasons to the requisite standard does not extend to an obligation to address every argument of fact and law made by parties during a public consultation process: judgment of 15 June 2023, *Eco Advocacy*, C-721/21, ECLI:EU:C:2023: 477 (at §42). So that doesn't add anything to the domestic argument.

97. The conclusion on core ground 3 is that the applicant has demonstrated substantial grounds to impugn the decision. However, lack of reasons from the NTA is not a ground for judicial review. The issue is whether the board has provided reasons. There are substantial grounds for saying that the reasons were not sufficient. But the board can't be condemned for not responding "in full" to submissions. The substantial ground is concerned only with the lack of reasons in relation to the impact on the applicant's rights. The *substantive* complaint of breach of such rights (as opposed to reasons for doing so) is covered by core grounds 2 and 4.

Core ground 4 – other breach of rights

98. Core ground 4 is:

the Section 51 Approval constitutes a "Disproportionate impact of Proposal on Residents and Residential Property in breach of constitutional rights".

99. Insofar as it complains about other people's constitutional rights it is a *ius tertii*: *Mohan v. Ireland and the Attorney General* [2019] IESC 18, [2021] 1 I.R. 293, [2019] 2 I.L.R.M. 1, [2019] 3 JIC 2101 at §10 and §26 (O'Donnell J.); *Cahill v. Sutton* [1980] I.R. 269, [1980] 7 JIC 0901 at 283 (Henchy J.); *Hellfire Massy v. An Bord Pleanála & Others* [2021] IEHC 424, [2021] 7 JIC 0201 at §54.

100. Insofar as this relates to alleged disproportionate interference with rights of the applicant other than those covered by other grounds, one can see substantial grounds for the argument that there are a number of rights closely related to but conceptually distinct from property rights as such, in particular the right to privacy, to the dwelling and to personal safety and physical and mental health, however one wants to phrase that in constitutional terms. Sure the applicant hasn't fully particularised these in express terms but they seem fairly obvious. I am going to direct certain particularisations anyway so I can include that and if anybody disagrees that such matters are properly covered they should let me know as soon as possible and the matter can be debated. I did consider whether the right to fair procedures was intended to be included but I don't think that that is acceptably clear and I am not going to include that in the particularisation order. The other more substantive matters are, however, acceptably clear in my view from the applicant's material, so spelling them out is mere particularisation, not amendment in the strong sense.

101. The conclusion on core ground 4 is that the applicant has demonstrated substantial grounds to impugn the decision. However that is limited to impact on the applicant's rights, not on the rights of residents generally.

Form of the amended statement of grounds

102. Since leave will therefore be granted, the appropriate step at this stage is to allow an amended statement of grounds to be filed.

103. Without prejudice to any other procedural rights that the applicant has, this should delete matters not given leave, and add headings for ease of navigation. The only other bit of limited redrafting that is required is that the complaint of disproportionate impact on rights generally was argued as both a substantive disproportionality and as a reasons issue, but the layout of the grounds could be clearer. The easiest way to simplify matters is to allow the applicant to repeat the language under a disproportionality heading, leaving the language also stand under an reasons heading to be added. To simply add the reasons heading to what is there would unfairly narrow the point the applicant has sought to make.

104. The amendments also need to factor in the fact that the opposing parties have sought to phrase the applicant's points as core grounds. In that regard I think the best way to deal with things is to use the opposing parties' formulae as the starting point for the core grounds, although I have narrowed the wording with various additional qualifiers (underlined) and used the applicant's language as the starting point for particulars of grounds.

- 105.** Order 84 r. 20(4)(b) RSC does allow the court to direct particularisation of the claim:
 “The Court hearing an application for leave may, on such terms, if any, as it thinks fit:
 (a) allow the applicant’s statement to be amended, whether by specifying different or additional grounds of relief or otherwise,
 (b) where it thinks fit, require the applicant’s statement to be amended by setting out further and better particulars of the grounds on which any relief is sought.”
- 106.** I think it is appropriate to consider availing of that both for the clarifications I have already mentioned and to set out the applicant’s complaint in slightly more detail. As regards adding further particularisation, I don’t want the applicant to be disadvantaged due to lack of legal knowledge, or to leave things undefined so that there will be legal arguments later, but on the other hand I don’t want to encourage her to expand her case. (And lest anyone misunderstand, that doesn’t completely preclude further amendment - it just precludes my encouraging that.) If I were to adjourn the question of the wording of any particularisation to await correspondence between the parties that will delay things further because leave can’t be granted until that is sorted out. On balance I think the least bad approach is to extract from the materials and submissions what I think are the pertinent particulars and allow them to be included, but if either side thinks this is problematic or needs to be significantly re-worded they can raise it on the next occasion. I have also added sub-ground numbers for ease of reference going forward.
- 107.** So the redraft would be as follows (strike-through where leave refused, underlining for additions):

“CORE GROUNDS

- 1.** ~~The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because of the failure of the National Transport Authority to notify affected residents of the proposed bus stop arrangement in respect of the bus stop to be located at approximate chainage A6575 outside ... [the street concerned] and failed to follow the procedures explained in the Public Consultation Submission Report~~
- 2.** The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because it breaches constitutes a disproportionate interference with the Applicant’s right to quiet enjoyment of her property pursuant to Article 40.3 and 43 of the Constitution.
- 3.** The decision of An Bord Pleanála to grant approval pursuant to section 51 of the Roads Act, 1993 (as amended) for the Clongriffin to City Centre Core Bus Corridor Scheme is invalid because the National Transport Authority and An Bord Pleanála did not respond in full to the submissions made by residents provide adequate reasons in relation to the impact on the applicant’s rights (as pleaded at core grounds 2 and 4) in respect of the bus stop to be located at approximate chainage A6575 outside [the applicant’s property].
- 4.** The Section 51 Approval constitutes a disproportionate impact of ~~Proposal~~ on Residents and Residential Property the applicant in breach of constitutional rights.

PARTICULARS

Core ground 1 – failure to give notice

- 5.** ~~Failure by the NTA to follow Procedure. There was no Notification to the Applicant or any of the affected Residents by the NTA of the proposed new Bus Stop arrangement, and there was a material misstatement of the Consultation Procedure in the Application Documents from the NTA. Neither the Applicant nor any of the Residents received any formal Notification by Letter as impacted parties at the Third Consultation which the NTA states was issued in November 2020. Consequently, neither the Applicant nor any of the Residents were given the opportunity for one to one consultations as was their right as affected landowners.~~

Core ground 2 – breach of rights

- 6.** Breach of Constitutional Property Rights under the Irish Constitution per Article 40.3 and 43 with regard to Applicant’s Constitutional Right to quiet enjoyment of one’s Property and the expectation that a Property owning Citizen would not be disproportionately affected by Planning Decisions of An Bord Pleanála or NTA Schemes.
- 7.** In particular (insofar as concerns core grounds 2 and 4):
 - a. The decision impacted disproportionately on the privacy and personal safety of the applicant and of her household;
 - b. The board erred in reasoning by adopting contradictory characterisation of the area as urban and suburban;
 - c. The board made an erroneous statement that congregation of passengers would be for short periods, having regard to the lack of data, the 24 hour service, the decommissioning of 2 stops, the plan to expand numbers further, and the demand on the service as it stands;

- d. The board erred by mischaracterising the applicant's safety concerns as annoyance;
- e. The board placed incorrect reliance on accommodations when no relevant accommodations were proposed insofar as affects the applicant's concerns;
- f. The board incorrectly weighed the detriments to the applicant's rights against the benefits of the scheme as a whole when the correct comparison was with the benefits of the particular location over an alternative bus stop location such as maintaining the status quo.

Core ground 3 – lack of reasons

8. Detailed and rational residents' observations insofar as they relate to issues impacting on the applicant were not responded to in full by the NTA or ABP internal Reports and the Final Decision specifically in relation to details highlighting the Planning History and the justification for, location of, and the detailed design of the proposed Bus Stop outside [the applicant's property].

Such failings include but are not limited to the following foregoing :-

(1) — ~~Lack of careful consideration of proposed removal of the existing Two fully functional Sheltered Bus Stops and their replacement with merely one metal Bus Stop Sign with no Shelter. There is no evidence of any such careful consideration in the relevant NTA documentation.~~

(2) —

~~Bus Stop No. 1219 was simply omitted prior to Consultation 1 (without any replacement) and no justification; Bus Stop No. 1220 was removed prior to Consultation 2 (without replacement), and no justification. The proposed Bus Stop to be located at [the property concerned] was introduced at Consultation 3 without any justification.~~

(3) — ~~Flaw in justification for new Bus Stop at Submission of Application "due to proximity with the new Kilmore Road Stop" (Preliminary Design Report, Appendix H, Page 44 of 52, Location Review), which is a clear post rationalisation of the planning process. It is misleading, and appears to be used to justify the "amalgamation" of a Bus Stop.~~

~~"Where existing Bus Stops on a route are in close proximity to each other they may be amalgamated into a single stop. This must be assessed on a case by case basis." (Appendix A4.1 Preliminary Design Guidance Booklet for BusConnects Core Bus Corridor, section 11. Bus stops).~~

(4) — ~~Justification for new Bus Stop providing "greater permeability" is not backed up with details — the Applicant and Residents' observations clearly set out the flaws in this argument (Sections 3. & 3.1.).~~

(5) — ~~Alternative locations were demonstrated where the NTA preferred layout could have been applied and there was an entirely insufficient response to such observations of the Applicant and the Residents.~~

(6) — ~~Proposed substitute Bus Stop for two existing Bus Shelters was a late stage design change severely impacting Private Residences such as that of the Applicant at [the property concerned] and was not communicated to the disproportionately affected Property owners such as the Applicant.~~

(7) — ~~Contravention of the proposal with NTA internal design guidelines in the location and design of the substitute Bus Stop outside the Cottages was not addressed in any way despite being highlighted by the observations of the Applicant and Residents.~~

(8) — ~~Insufficient footway width to accommodate the substitute Bus Stop outside [the street concerned].~~

(9) — ~~No reasonable space for the substitute Bus Shelter.~~

(10) — ~~Insufficient sizing of the substitute Bus Stop for expected passenger numbers and Bus travel demand.~~

(11) — ~~Reduced width of cycle path behind said Bus Stop.~~

(12) — ~~Non application of " Shared Bus Stop landing zone arrangement (Urban Centres) " design for said Bus Stop.~~

(13) — ~~Non provision of a Bus Shelter for said substitute Bus Stop in contravention of design standards.~~

(13a) Disproportionate impact of Proposal on Residents and Residential Property the applicant in breach of constitutional rights :

(14) — ~~The proposed substitute Bus Stop for two other fully operational Bus Shelter Stops is the only Bus Stop in front of any houses without front gardens along the entire Scheme, and indeed the only new Bus Stop proposed in front of any residential property.~~

(15) — ~~EIA does not account for impact on the applicant Residents at [the street concerned] including increased physical danger through accidents due to narrowing of the existing footpath to accommodate cycle lane and the impediment to safe entrance and exit at the~~

Front Doors of disproportionately affected Residential Properties due to the congregation of waiting passengers at a 24hr Bus Stop.

Increased danger of crime being committed against Persons or Properties insofar as that affects the applicant due to congregation of waiting passengers at a 24 hour Bus Stop.

~~(15a) Reduced enjoyment of the Applicant's and Residents Property and Privacy.~~

~~(16) No impact assessment provided on expected long-term very negative impact on the Applicant and Residents of [the street concerned] Malahide Road.~~

~~(17) [the street concerned] are the only " Other Structures of Architectural Heritage Interest " (EIA, 16.4.4) actually negatively affected by the entire Bus Connects Scheme.~~

~~(18) Residential amenities of the Properties further reduced after decades of incremental negative impacts of poor infrastructure planning.~~

~~(19) Loss of Property Values of Applicant and Residents.~~

~~(20) Existing antisocial behaviour by passers-by likely to be aggravated by increased times spent waiting at bus stop and no An Garda Siochana Assessment was provided.~~

Core ground 4 – disproportionate impact on other rights

9. Disproportionate impact on the applicant in breach of constitutional rights in particular the right to privacy, to the dwelling and to personal safety and physical and mental health.

10. Reduced enjoyment of the Applicant's Property and Privacy."

108. I would also give liberty to correct the format of the relief sought which should be along the following lines:

"An order of certiorari removing for the purpose of being quashed the approval by An Bord Pleanála on 8th January 2024 (under ref. ABP-313182-22), under section 51 of the Roads Act 1993 of the proposed road development consisting of the construction of the Clongriffin to City Centre Bus Corridor Scheme."

109. Normally an applicant would also claim for further and other relief and costs. Further and other relief isn't perhaps strictly a necessary claim in judicial review (although it might be in other contexts) because of the express power to grant unpleaded substantive reliefs under O. 84 r. 19 RSC, but it is always a *tabula in naufragio*. Costs might however be a necessary claim, and it seems a bit harsh to say that the applicant can't recover expenses (let alone costs if she gets representation at a future point) because she didn't add this. My provisional inclination would be to allow those two standard generic reliefs to be added in the amended statement of grounds if the applicant so wishes. If anyone wants to dispute that they can apply appropriately.

Summary

110. In outline summary, without taking from the more specific terms of this judgment:

- (i) alleged defects in pre-statutory consultation are not a ground for *certiorari* if they have been remedied in the statutory consultation process;
- (ii) insofar as the applicant has raised issues regarding the non-implementation of the Aarhus convention in relation to pre-application consultations, that isn't properly pleaded and no amendment was sought, and in any event is essentially a transposition-type argument which requires State respondents to be joined;
- (iii) the applicant has, however, demonstrated substantial grounds for alleged disproportionate impacts on her property and other rights and for a lack of reasons in that regard;
- (iv) to avoid further procedural problems, and in the interests of clarity, the applicant's pleadings should be reformatted and further particulars directed as outlined in this judgment; and
- (v) on that basis leave is granted in the terms set out in the judgment and refused in all other respects.

111. Before concluding maybe I could take the risk of saying that it isn't apparent to me that this dispute is utterly beyond the realm of settlement. If hypothetically that were to become a possibility, it goes without saying that the court will assist in any way possible. But if not, I won't hold that against anybody.

112. If matters are going forward, I might, as in *Dowling v. An Bord Pleanála* [2024] IEHC 249, [2024] 5 JIC 0103, draw attention to the benefits for parties and indeed for the court of litigants obtaining legal representation, which may be easier for the applicant to arrange now that she has leave. While the applicant did well to get across the first line of defences without such representation, especially against teams of lawyers drawn from the leading ranks in a list where the standard of practitioner intellectual fire-power is exceptionally high to begin with, her immediate reward for scrambling over that hurdle is to discover a panorama of further procedural landmines laid before her, stretched to the horizon. Especially given that the threshold at this point is only substantial grounds rather than actually having a good point, she shouldn't take excessive comfort

from the present decision on its own, even acknowledging, without at all taking from the helpful submissions of the professionals, that her own submission was very persuasive and well-delivered.

Order

113. For the foregoing reasons, it is ordered that:

- (i) there be an order granting leave on standard terms, on the basis of liberty to file an amended statement of grounds in the terms indicated in the judgment, and refusing leave in all other respects;
- (ii) there be an order under Order 84 r. 20(4)(b) RSC directing further particularisation of the claim, as set out in the judgment;
- (iii) the amended statement be filed and served within 2 weeks of delivery of the judgment and the originating notice of motion be filed and served within a further 2 weeks to be returnable for 9th September 2024;
- (iv) the applicant be given liberty to file an affidavit before that date formally exhibiting all documents relied on that have been put before the court but not as yet been exhibited; and
- (v) the formal order be perfected forthwith on the basis of the applicant's expenses being reserved.