[2024] IEHC 604

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2022.0000689]

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

BETWEEN

BAILE BHRUACHLAIN TEORANTA, COILL BHRUACHLAIN TEORANTA, BAILE EAMOINN TEORANTA AND GLANN MOR CUAN TEORANTA AND GLANN MOR CEIBH TEORANTA

APPLICANTS

AND

GALWAY COUNTY COUNCIL

RESPONDENT

JUDGMENT of Humphreys J. delivered on Friday the 1st day of November 2024

1. Landowners in Co. Galway made submissions to the council primarily seeking rezoning of their lands to residential or tourism uses. In October 2021, the chief executive (**CE**) summarised the relevant submission extensively and recommended no change in relation to the areas sought to be zoned residential, something with which the members agreed. The CE recommended no zoning for the area that the applicants ultimately wanted specified for tourism purposes, whereas the members disagreed and zoned that area open space, giving a reason. The landowners now demand *certiorari* based on an alleged inadequate summary of their submission and an alleged lack of reasons for the open space zoning, as well as unavailability of agendas which they never sought and minutes which didn't exist as minutes at the material time because the drafts hadn't been approved by the members, and which weren't sought until after the procedure for submissions on the residential zoning issues had closed. The issue here is whether these are valid grounds for *certiorari* in the circumstances.

Geographical context

2. The application concerns three areas owned by the applicants (different applicants owning different lands) at Maigh Cuilinn, An Spidéal and An Ceathrú Rua in Conamara, Co. Galway. The latter site is a quayside property at Céibh an tSrutháin which is about 1.5 km from An Ceathrú Rua proper – although diffuse ribbon development wouldn't be unknown in the Conamara area so it seems legitimately described as in An Ceathrú Rua.

Facts

3. On 18th June 2020, the respondent council gave notice to the public of its intention to review the Galway County development plan 2015-2021, thereby commencing the statutory process of making the new plan.

4. In September 2020, agents on behalf of the applicant companies (MKO Ireland) made a submission (**the first submission**) on the issues paper which would inform the making of the draft new plan. These submissions addressed the three sites the subject of the grounds of challenge.

5. In May 2021, the respondent published the Galway County draft development plan 2022 – 2028, Volume I (the draft plan). Members of the public were invited to make submissions or observations regarding the draft plan, in writing or electronically *via* the website, to the Planning Authority between 20th May 2021 until Friday 30th July 2021.

6. On 28 July 2021, MKO Ireland, planning and environmental consultants made a submission (**the second submission**) on the draft plan. This states on its face that it is made on behalf of the first and third named applicants. It is a hefty 109-page document including appendices.

7. In October 2021, the CE of the respondent presented a report on the draft plan consultation process. This summarised the submissions made. The report was 1,348 pages long, and endeavoured to summarise a grand total of 2,877 submissions received.

8. During the months of December 2021 / January 2022, special meetings of the council were convened to consider the content of the report of the CE dated October 2021. A critical material amendment to which objection is taken was passed on 12th January 2022 in relation to Céibh Sruthán changing the proposed zoning (from unzoned to open space).

9. During February and March 2022, the public consultation period on proposed material alterations to the draft plan was held.

10. In February 2022, and thereafter, the applicants through their advisers MKO Ireland sought a copy of the minutes in relation to the material amendments by contacting council officials, but these were not available at that point. Indeed it is quite clear that the minutes, *qua* minutes, didn't exist at that point. Until approved by members at a subsequent council meeting, there are only draft minutes. When approved and signed they become the minutes.

11. On 4th March 2022, MKO Ireland prepared a submission (**the third submission**) on the proposed material alterations to the draft plan. This related purely to Sruthán Quay, the gist being that the area should be zoned for tourism rather than open space.
12. In March 2022, the CE published a report on submissions received on the proposed material alterations to the new plan. Thereafter, in April / May 2022, the elected members held special meetings of council to consider the proposed material alterations to draft plan.
13. The new plan was adopted on 9th May 2022. Statutory notice of adoption of the new plan was not published at that time.
14. On 3rd June 2022, the Office of the Planning Regulator made a submission on the plan to the Minister of State for Housing, Local Government and Heritage (**the Minister**).
15. On 16th June 2022, the Minister issued a draft ministerial direction to the council, pursuant to s. 31 of the 2000 Act.
16. On 17th June 2022, the council published notice of the making of the Galway County development plan 2022-2028 in *The Connacht Tribune*.
17. On the same date, the applicants' agent, MKO Ireland, notified Mr Ronan Barrett (a director of the applicant companies) of the notification of the making of new plan and also the draft ministerial direction.
18. Volume 2 of the new plan, together with appendices did not become publicly available or accessible until a date in or around the end of July 2022.
19. On 29th June 2022, a letter was sent to the Minister on behalf of the applicants, containing submissions on the s. 31 draft direction.
20. On 30th June 2022, Mr Barrett made a request to the council pursuant to the Freedom of Information Acts, seeking copies of the minutes of all special meetings in 2022.
21. On 8th July 2022, the applicants (through MKO Ireland) made a submission to the Minister concerning the draft direction issued to the respondent on the new plan.
22. On 13th July 2022, the respondent issued a response to the freedom of information (**FOI**) request, refusing access to the documents requested, on the basis that the information sought was already in the public domain, which wasn't the case at that time other than by inspection in the council's offices.
23. On or about 3rd August 2022, the applicants accessed copies of the minutes of the special meetings of the council which were obtained by the applicants' advisers through the respondent's extranet, a non-public facing area of the respondent's website but one that can be accessed without infringing any security measure. We will return to this somewhat irregular situation.

Procedural history

24. On 5th August 2022, proceedings were issued, out of time. Eight weeks from the adoption of the plan on 9th May 2022 would have been 4th July 2022. But in fact the council didn't make an issue of that, so it would appear that I can extend time without objection. In an adversarial system I amn't particularly motivated to interrogate the applicants' alleged difficulties in instituting the proceedings in time if the respondent isn't doing so, so I will take their explanations at face value.
25. On 28th September 2022, the Minister of State at the Department of Housing, Local Government and Heritage, in exercise of the powers conferred on the Minister by s. 31 of the 2000 Act and delegated to the Minister of State, and consequent to a recommendation made to him by the Office of the Planning Regulator under s. 31AN(4) of the 2000 Act issued a direction to the respondent on matters relating to the new plan.
26. On 12th December 2022, the matter was entered into the List and liberty was granted to file an amended statement of grounds. The Minister was to be added as a notice party, although I am not sure whether this was actually taken up. I don't think the failure to do so in fact makes any difference or causes the Minister prejudice, but the parties might be good enough to notify the Minister of the outcome just in case.
27. On 30th January 2023, an amended statement of grounds was filed.
28. On 30th January 2023, leave was granted.
29. On 20th February 2023, the court was told that no costs protection had been agreed. Directions were given for submissions on this.
30. On 6th March 2023, the court was informed that the applicant had decided not to press the costs protection issue at this stage. Standard directions for papers were given running from that date.
31. On 28th April 2023, opposition papers were filed on behalf of the respondent.
32. On 9th June 2023, a replying affidavit was filed on behalf of the applicants, who indicated an intention to seek discovery.
33. On 19th June 2023, a further replying affidavit was filed.
34. On 2nd October 2023, the matter was sent to the List to Fix Dates with two weeks for a discovery motion.
35. On 19th October 2023, a replying affidavit was filed on behalf of the respondent.

36. On 22nd January 2024, a further order was made giving liberty to issue a discovery motion.
37. On 26th February 2024, the issue of discovery was still outstanding and the council proposed to file an affidavit stating that there were no further documents to disclose.
38. On 4th March 2024, the matter was sent to the next List to Fix Dates, the parties turning down the offer of a date in September 2024 in the pilot project for Long Vacation sittings.
39. On 29th April 2024, a hearing date of the 22nd October 2024 was assigned.
40. On 24th September 2024, the applicants' submissions were filed and served.
41. On 16th October 2024, the respondent's submissions were served.
42. On 21st October 2024, the elected members approved the defence of the proceedings for the purposes of the Local Government Act 2001. I am informed that the applicants did write to the members making their case and indeed seeking the opportunity to address the meeting (albeit that this was declined). This illustrates the benefit, advantage and purpose of the procedure for express authorisation by the members, because it gives an opportunity for members to consider the case as to why the defence of proceedings should not be authorised (and consequentially, the opportunity for an interested party to make such a pitch to the members). After that, one has done what one can, and it is up to the members to decide whether to defend the plan as adopted or submit to *certiorari* of any contested provision. In the event, if I may be permitted to borrow the demotic but apt terminology of Kenny Rogers ("The Gambler", 1978) they decided to "hold 'em" rather than "fold 'em".
43. The statement of case contains the following comment:

> "The matter is scheduled for hearing on 23 October 2024 (having previously been fixed for three days at hearing, on 16 October 2024 the matter was curtailed to a single day commencing at 09.30hrs)."

44. But that is a bit of a misunderstanding. First of all, statutory Practice Direction HC126 effected a general reduction of the standard case length for cases in the List from three days to two to three days as determined by the court. What happened in this case was that the judge initially planning to take this case over two to three court days had to deal with an injunctive matter listed on Thursday October 24th. Consideration was then being given to various options as to how to manage that including but not limited to having another judge hear this case to avoid any possible overrun. The matter was intended to be called on 14th October 2024 to discuss that, but due to oversight it was not listed. Counsel who had some knowledge of or involvement in (it doesn't particularly matter at this stage) the present matter and who was also briefed in the October 24th matter contacted the registrar on 15th October 2024 to ask for confirmation that the same judge would deal with both. In response to that I asked that the message be communicated that matters should not be handed over as yet and that there would be further communication as to whether the present matter was going on. Counsel replied giving the view that as there were only two parties and only three core grounds it should finish within two days. In the end (and to some degree influenced by the view of counsel that the matter could be relatively net) the preferred solution was that the parties were invited to agree to a hearing over a single long calendar day with a time estimate of 5.5 hours. In fact both parties agreed to that. The motivation for this was in part to facilitate counsel (because I assumed that the counsel who had been in touch was going to be appearing in the present matter – that would appear not have been an automatically correct assumption but again that doesn't particularly matter at this stage). The voluntary reduction was effectively a relatively modest one from the suggested two court days (8 hours) to 5.5 hours, not the involuntary 66% slashing of time from three to one days suggested by the statement of case. Thus the language of "curtail[ment]" was overheated. Having discussed the matter with the parties on the hearing date I did suggest possible flexibility additionally and to facilitate the parties I agreed to sit for even longer hours (certainly not to be taken as a precedent). Ultimately no major objection was articulated to the solution arrived at. But more generally (not specific to this case) one needs to repeat the point that lengthy submissions are not to be equated with effective submissions – the most effective thing is to major on one's best points as efficiently and briefly as possible. The overall time envelope is a subsidiary consideration and extra time normally doesn't add a whole lot, if that isn't an unacceptably pragmatic view.
45. The matter was in the event heard within one calendar day on 23rd October 2024, when judgment was reserved.

Relief sought

46. The reliefs sought in the amended statement of grounds are as follows:

> "(i) ~~An Order of certiorari, by way of judicial review, quashing the decision of Galway County Council (the Respondent herein), made on 9 May 2022, to adopt the draft Galway County Development Plan 2022 – 2028 (as amended by Material Alterations) ("the decision").~~ An Order of certiorari, by way of judicial review, quashing the Galway County Development Plan 2022 – 2028 as adopted by decision of Galway County Council (the Respondent herein) on 9 May 2022, and which came into effect on 17 July, 2022 in so far

as it affects the lands which are owned and/or being developed by the Applicants and/or each of them at Moycullen, Spiddal and/or Carraroe, County Galway, as more particularly identified in the Affidavits already filed on behalf of the Applicants herein and, in particular, in the submission by MKO to Galway County Council dated 28 July 2021.

(ii) Further, or in the alternative, an order pursuant to section 50A(9) of the Planning and Development Act 2000 (as amended), declaring to be invalid or quashing the part or parts of the decision which the court finds to be invalid, together with any consequential amendments to the remainder of the decision or part thereof that the court may consider appropriate.

~~A Declaration, by way of judicial review, that in making the aforesaid decision the Respondent acted in breach of fair procedures and erred in law such that the decision was ultra vires the powers of the Respondent and the decision is null and void and of no legal effect;~~

(iii) A Declaration, by way of judicial review, that in making the aforesaid decision the Respondent failed to adequately provide for effective public participation in the decision making process contrary to its obligations pursuant to section 12 of the Planning and Development Act 2000 (as amended), by reason of a failure to fully and fairly summarise the detailed submissions of the Applicant in the Chief Executive's Report dated October 2021, and/or in the Chief Executive's Report on Submissions received on the Material Alterations to the New Plan (March 2022), in consequence whereof the aforesaid decision of the Respondent is unlawful, ultra vires the powers of the Respondent, and is null and void;

(iv) A Declaration, by way of judicial review, that in failing to make available the minutes of the Plenary and Special Meetings of the Council on various dates in 2021 and 2022, the Council acted in breach of fair procedures and natural and constitutional justice and, in consequence whereof, the decision of the Respondent is invalid, unlawful, ultra vires the powers of the Respondent, and is null and void;

~~Further, or in the alternative, a Declaration that the Respondent acted in breach of its obligations and/or the Applicants implied rights under article 28A of the Constitution of Ireland, which provides that the State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law, which in the present context involve the exercise and performance of the respondents statutory functions in relation to the review, preparation and adoption of the statutory development plan, and the notification of the development plan, pursuant to sections 9-12 of the 2000 Act.~~

~~Such declaration(s) of the legal rights and/or legal position of the Applicants and (if and insofar as legally permissible and appropriate) persons similarly situated and/or of the legal duties and/or legal position of the respondent as the court considers appropriate.~~

(v) Such declaration(s) of the legal rights and/or legal position of the Applicants and (if and insofar as legally permissible and appropriate) persons similarly situated and/or of the legal duties and/or legal position of the respondent as the court considers appropriate.

(vi) If necessary, an Order pursuant to section 50A(8) of the Planning and Development Act 2000 (as amended), extending time for the purposes of making the within application for judicial review.

(vii) If necessary, an Order providing for the discovery of documentation which is or has been in the power, possession or procurement of the Respondent and which is relevant to any issue in these proceedings;

(viii) Further and/or other Order or relief;

(ix) Liberty to apply;

(x) Liberty to file further Affidavits;

(xi) A Declaration that the special costs rules apply to the proceedings under Section 50B of the Planning and Development Act, 2000, as amended, and/or Sections 3 and 4 of the Environment (Miscellaneous Provisions) Act, 2011, and/or pursuant to Order 99 in accordance with the interpretative obligation arising under Article 9 of the Aarhus Convention."

Grounds of challenge

47. The core grounds of challenge are as follows:

"Core Ground No. 1 - The Chief Executive's report (October 2021) on the Draft Plan consultation process does not provide an adequate summary of the submissions made on the applicants' behalf as a consequence of which the Respondent has acted in breach of Section 12 of Planning and Development Act 2000 (as amended) ('the 2000 Act'), as interpreted in accordance with fair procedures and constitutional justice. Further, or in the alternative, the applicant has been deprived of fair procedures in the consideration and or assessment by the Respondent of its proposed amendments to the Draft Plan.

Core Ground No. 2 - The Decision is invalid by reason of the failure of the elected members to give reasons for their decision to oppose the recommendation of the Chief Executive in his report dated March 2022 in relation to Material Amendment No. RSA LUZ Sruthán Quay 19.1, i.e. that the lands should not be zoned as per the said Material Amendment, and instead to adopt the said Amendment. In consequence, the decision is contrary to the requirements of fair procedure and natural justice, and is unreasonable and invalid.

Core ground No. 3 –The Decision is invalid by reason of the failure of the Respondent to make available to the Applicants, over a prolonged period of time, the minutes and agendas of special meetings of the Council. In consequence, the decision was made in breach of fair procedures and/or in breach of natural and constitutional justice, in so far as the Applicants were unlawfully denied access to an effective public consultation process during the course of the statutory process leading up to the decision of 9 May 2022 to adopt the New Plan, as a result of the matters referred to under the Particulars of Core Ground no.3, below. Further, or in the alternative, the Respondent acted in breach of its obligations under article 28A of the Constitution of Ireland which provides that the State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law, which in the present context involve the exercise and performance of the respondents statutory functions in relation to the review, preparation and adoption of the statutory development plan pursuant to sections 9-12 of the 2000 Act."

48. Certain grounds were withdrawn as follows:

"1. The Applicants do not propose to rely on the particulars at §9 and § 10 of the Statement of Grounds.

2. In so far as Core Ground No. 1 (relating to Moycullen and Spiddal), this Ground will only be pursued by the First and Third Named Applicants, being the Applicants on whose behalf the relevant submission by MKO dated 28 July 2021 on the Draft Plan is stated to be made in the said submission, and by the Second Named Applicant who is the owner of lands at Moycullen.

3. In so far as Core Ground 2 is concerned (relating to Sruthán, Carraroe), this Ground is not being pursued by the Second Named Defendant, who is not named in the MKO submission dated 4 March 2022 and who has no interest in lands at Sruthán. Core Ground 2 is being pursued by all the other Applicants. (The said MKO submission was dated 4 March 2022 expressly states that the said submission is made on behalf of the First, Third and Fourth Named Applicant. The Fifth named Applicant owns lands at Sruthán, Carraroe.)

4. For clarity, the relevant Applicants have not pleaded any reasons ground under Core Ground 1 (relating to Moycullen and Spiddal) and are, therefore, not pursuing the argument made at § 37 of their Legal Submissions."

49. Insofar as points were made in submissions that fall outside the pleaded grounds it is not appropriate to deal with these.

Summary table

50. Given that there are three sets of lands, five owners and three grounds it may be useful to set out in tabular form which grounds apply to which sites:

	Maigh Cuilinn First & Second Applicants	**An Spidéal Third Applicant**	**An Ceathrú Rua (Céibh an tSrutháin) Fourth & Fifth Applicants**
Core ground 1 – inadequate summary in CE report	Lack of summary of second submission, sub-grounds 2 to 10	Lack of summary of second submission, sub-grounds 11 to 17	Not applicable
Core ground 2 – lack of reasons for material amendments	Not applicable	Not applicable	Lack of reasons – sub-grounds 18 to 24
Core ground 3 – lack of access to minutes	Pleaded in general terms – but the time for making submissions on these lands had passed prior to minutes being first	Pleaded in general terms – but the time for making submissions on these lands had passed prior to minutes being first	Pleaded in general terms

	sought in February 2022	sought in February 2022	

Domestic law issues

Core ground 1 – lack of adequate summary of submissions

51. Core ground 1 is:

"Core Ground No. 1 - The Chief Executive's report (October 2021) on the Draft Plan consultation process does not provide an adequate summary of the submissions made on the applicants' behalf as a consequence of which the Respondent has acted in breach of Section 12 of Planning and Development Act 2000 (as amended) ('the 2000 Act'), as interpreted in accordance with fair procedures and constitutional justice. Further, or in the alternative, the applicant has been deprived of fair procedures in the consideration and or assessment by the Respondent of its proposed amendments to the Draft Plan."

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

"Core Ground 1 – Moycullen

Applicants' position:

6. The Chief Executive failed to summarise adequately or at all the expert submission dated 28 July 2021 made by MKO, Planning and Environmental Consultants, on the draft Development Plan in support of the First and Third named Applicants' proposal that the lands owned by BBT and CBT at Maigh Cuilinn be rezoned for residential purposes (R1).

7. The MKO submission included a justification test which addressed, inter alia, the lack of any development on a number of other sites which were zoned for residential development in the previous development plan and the planning constraints on the development of such sites. The obligation under s. 12(4)(b) of the 2000 Act is to summarise the submissions, consider them and provide a response. There is no obligation on the elected members to consider the individual submissions made by members of the public or even public authorities generally.

8. The Applicants further plead under Core Ground 1 that the Council (a) failed in its obligation to consider the zoning of the lands in Moycullen for residential purposes on a de novo basis; (b) that the Council failed to 'have regard to' or apply the sequential approach; and (c) that the Council failed to apply a tiered approach to zoning, in accordance with the policy objectives of the National Planning Framework (NPF) in that regard.

9. In demonstrating that the Chief Executive did not engage with or provide any reasonable or fair summary of the MKO submissions of 28 July 2021 (and in particular, Appendix 3 thereof) in accordance with the requirements of s. 12(4)(b) the Applicants have established that the Council did not take a de novo approach, and by extension, did not apply either the sequential or tiered approaches to zoning. At the very least, this should have the effect of shifting the onus initially resting on the Applicants on to the Council itself to prove that the Applicants are in breach of their statutory obligations to have regard to the Development Plan Guidelines and/or the NPF in this context.

Respondent's position:

10. The impugned decision is valid and was lawfully made, and complies with the statutory requirements of the 2000 Act. The Applicant's Statement of Grounds amounts to an attempt to engage in a merit- based review to adopt the Galway County Development Plan and/or a collateral attack on the Strategic Flood Risk Assessment undertaken.

11. A Submission was only made on behalf of the First and Third Named Applicants in July of 2021 ('the MKO Submission'), being the only submission of which the Applicants seek to complain about the summary of same and of those Applicants only the First Named Applicant is asserted by the Applicant to own any (and undefined) land in Moycullen. No submission whatsoever was made by or on behalf of the Second Named Applicant who it is contended can make no complaint whatsoever of how the MKO submission was summarised. The Chief Executive's Report provided a proper and adequate summary of the submissions made on behalf of the First Named Applicant (the MKO submission also being made on behalf of the Third Named Applicant but it not owning any land in Moycullen).

12. The Respondent denies that there was any breach of fair procedures and/or constitutional justice and denies that elected members did not have adequate regard to the submissions made on the Applicant's behalf and the summary of same by the Chief Executive. The Respondent points to the length of the submissions being summarised in the Chief Executive's Report , categorises the issues raised as 'micro-issues' and maintains that they must be viewed in the context of the volume of such issues raised in the 2,877 submissions received on the Draft CDP.

Core Ground 1 – An Spidéal/Spiddal

Applicants' Position:

13. The Chief Executive's report (October 2021) on the Draft Plan consultation process does not provide an adequate summary of the submissions made on the Applicants' behalf by MKO, planning and environmental consultants, dated 28 July 2021, in breach of Section 12 of the 2000 Act resulting in an inadequate assessment of same by the Chief Executive and the elected members. The Applicant's position is that the Chief Executive's summary of the Applicant's submissions is incomplete and fails to take into consideration the substance of the site-specific analysis in the Applicants' submission.

14. Further, it does not fully, fairly or accurately summarise the nature of the submission; it failed to record, less still consider, the nature of the technical solution to the risk of flooding on the lands; ignored that both the Council's own Senior Engineer had approved flood risk mitigation works at the same site, under the same conditions, and supported the grant of permission for development on the site and also that An Bord Pleanála has similarly considered the flood risk and was satisfied to grant planning permission.

Respondent's position:

15. The impugned decision is valid and was lawfully made, and complies with the statutory requirements of the 2000 Act. The Applicant's Statement of Grounds amounts to an attempt to engage in a merit- based review to adopt the Galway County Development Plan and/or a collateral attack on the Strategic Flood Risk Assessment undertaken. The arguments advanced by the Third Named Applicant, that flood protection measures previously proposed as part of a planning application (which had not been granted as of the relevant time) should have been considered or taken as given in the zoning of the lands in question, are entirely misplaced and the Council was in fact obliged to disregard same, even if constructed, in considering the zoning of the lands in accordance with the Planning System and Flood Risk Management Guidelines for planning authorities.

16. The Chief Executive's Report provided a proper and adequate summary of the submissions made on behalf of the Third Named Applicant.

17. There was no breach of fair procedures and/or constitutional justice and denies that elected members did not have adequate regard to the submissions made on the Third Named Applicant's behalf. The summary dealt with the issues raised on behalf of the Third Named Applicant and the Respondent points to the length of the submissions being summarised in the Chief Executive's Report , categorises the issues raised as "micro-issues" and maintains that they must be viewed in the context of the volume of such issues raised in the 2,877 submissions received on the Draft CDP."

53. Section 12(4) of the 2000 Act provides:

"(4) (a) Not later than 22 weeks after giving notice under subsection (1) and, if appropriate, subsection (3), the chief executive of a planning authority shall prepare a report on any submissions or observations received under subsection (2) or (3) and submit the report to the members of the authority for their consideration.

(aa) A chief executive's report prepared for the purposes of paragraph (a) shall be published on the website of the planning authority concerned as soon as practicable following submission to the members of the authority under paragraph (a).

(b) A report under paragraph (a) shall—

(i) list the persons or bodies who made submissions or observations under this section,

(ii) provide a summary of—

(I) the recommendations, submissions and observations made by the Minister, where the notice under paragraph (a) of subsection (2) was sent before the establishment of the Office of the Planning Regulator,

(II) the recommendations, submissions and observations made by the Office of the Planning Regulator, and

(III) the submissions and observations made by any other persons,

in relation to the draft development plan in accordance with this section,

(iii) give the response of the chief executive to the issues raised, taking account of any directions of the members of the authority or the committee under section 11(4), the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives of the Government or of any Minister of the Government and, if appropriate, any observations made by the Minister for Arts, Heritage, Gaeltacht and the Islands under subsection (3)(b)(iv)."

54. What can be noted here is that s. 12(4) does not compel the CE to summarise submissions individually. It requires a summarisation of the submissions generally, which can be done by group, by theme, by geographical area, or any other appropriate way. It doesn't require point-by-point

refutation or hand-to-hand combat with each correspondent. It is not up to a judicial review applicant to dictate the form of a decision.

55. The first and third applicants' submissions are in fact summarised in several places and given relatively generous treatment by the CE. There are six elements of the submission that are summarised in the CE report, in relation to four of which the applicants make no complaint.

56. At p. 350 the CE summarises part of the submission as follows (there is no pleaded complaint about this):

GLW-C10-608	Baile Bhruachláin Teoranta & Baile Éamoinn Teoranta	A detailed submission has been made. Regarding Chapter 5 Economic Development, Enterprise and Retail Development it is proposed that the Draft County Development Plan should recognise the need to adapt to the move to online retailing, the change in shopping practices and the need to convert disused retail premises to alternative uses. 'Service hubs' should provide essential retail facilities to their immediate hinterland. Galway County Council should promote the delivery of 'Essential Retail' and 'Essential Healthcare' facilities within key gateway villages within the South Connemara region. Specific considerations are outlined for a number of towns and villages. The submission notes that the emerging plan offers the Planning Authority an opportunity to ensure that the appropriate measures are in place to protect and promote the important cultural heritage of Galway.	Chief Executive's Response: The Council is supportive of a multitude of uses in the town and village centres across the County. Alternative and newer uses such as working hubs are generally supported in appropriate locations. Chapter 10 Natural Heritage, Biodiversity and Green/Blue Infrastructure of the Draft Plan contains a series of supporting cultural heritage related Policy Objectives. There are also retail related supporting Policy Objectives in the Draft Plan. Chief Executive's Recommendation: No Change.

57. The second summary (p. 419) is as follows – there is no complaint about this:

GLW-C10-608	Baile Bhruachláin Teoranta & Baile Éamoinn Teoranta	This comprehensive submission recommends that tourism needs to be more at the forefront of this Draft	Chief Executive's Response: The Planning Authority welcomes the support for the policy objectives for

		Development Plan. It is noted that tourism is vital throughout the Connemara Region for the local community and economy. This submission welcomes the policies on Tourism in the Draft Plan however it requests that they are further developed. It is requested that DM Standard 44, Tourism Infrastructure and Holiday Orientated Developments, is amended to state: - 'The Council recognises that there is an untapped tourism potential in County Galway, particularly in the Connemara Region, which can be realised in different ways through the development of new tourism infrastructure facilities to enhance the tourism offerings of the region. Where the provision of such facilities complies with the other requirements of the County Development Plan as set out and the requirements of proper planning and sustainable development, the Council will consider the provision of same subject to the submission of the following: - Comprehensive justification of need for the facility - Overall master plan of the facility - Documentary evidence of compliance with the other requirements of the Development Plan.' It is requested under 15.7.1 Tourism Related Documents	Tourism within the Draft Plan. The Planning Authority are satisfied that the Policy Objectives as proposed create conditions to ensure the tourism economy can continue to develop and grow over the life of the Plan. The Planning Authority would like to reference Policy Objective GCTS 1 Galway County Tourism Strategy within Chapter 8 Tourism and Landscape. The plan will support the preparation and implementation of this strategy which will support the existing tourism sector whilst also ensuring the county is maximising its tourism potential. The Planning Authority note the amended text as suggested to DM Standard 44. The amended text as suggested is not considered to be significantly different from the text as proposed in the Draft Plan. The text which makes specific reference to the Connemara region is noted however, the Planning Authority consider that the County as a whole should be treated equally with regard to this DM Standard, and as such the wording as proposed in the Draft Plan is considered appropriate in this instance. The requested addition of the word 'also' in the first line under DM Standard

		under a) Tourism Infrastructure Development that the first line reads as follows: - 'The Council also recognises…' It is proposed that Policies CTB 1-5 and Policies SGV9 in Volume 1 are elaborated upon. It is proposed that the Development Plan should align more with the Fáilte Ireland Connemara Coast and Aran Islands Development Plan for the provision of new projects and facilities. It is recommended that the Development Plan should acknowledge potential opportunities that can bring tourism life in Connemara, such as the Celtic Camino/Camino Connemara, new greenways, blueways and cycle links between key towns and villages, South Connemara as an Adventure Tourism destination, new Heritage Piers, Geoparks and the designation of Designated Bathing Waters. It is submitted that more needs to be done to develop parking and waste management facilities at beaches in South Connemara to increase their potential as local tourism assets.	44 is not considered necessary. The Planning Authority are satisfied that the Policy Objectives including CTB 1 – 5 as proposed are appropriate with respect to the County Tourism Brands. The wording within SGV 9 Tourism, which relates to tourism in the small growth villages, is also considered appropriate in this instance. The Draft Galway County Development Plan 2022-2028 supports the Connemara Coast and Aran Islands Visitor Experience Development Plan (2017) within Section 8.7. The Council have consulted with Failte Ireland and there have been no concerns raised in terms of the alignment of the Draft Plan with this tourism document. The development plan has not listed every potential tourism development in the county but has included a suite of policy objectives that would support such projects as those listed in this submission for Connemara, and indeed elsewhere throughout County Galway. The Planning Authority acknowledge the development of parking and waste management facilities at beaches. The enhancement of such facilities would be supported within the

			provision of the Draft Plan as proposed. Chief Executive's Recommendation: No Change.

58. The third summary (p. 570) is as follows – there is no complaint about this:

GLW-C10-608	Baile Bhruachláin Teoranta & Baile Éamoinn Teoranta	Density and Building Heights - DM Standard 2: The submission requests that the Planning Authority prepare density standards in accordance with Chapters 5 and 6 of the Section 28 Ministerial Guidelines for Sustainable Residential Development in Urban Areas (2009). It is stated that the appropriate densities which are likely to apply to new residential development in villages is not clearly indicated. Building Lines – DM Standard 30: It is recommended that, where justification is provided, flexibility should be applied to DM Standard 30. The submission requests a statement regarding flexibility be included in this section to ensure development is not hindered where it may not be able to conform with the requirements of the standard. Parking – DM Standard 32: The submission requests clarity on whether the car parking standards outlined are a minimum or maximum standard. In relation to Table 15.5, the submission considers the standard of 1 car parking space per	Chief Executive's Response: An undertaking has been given to comply with the Section 28 guidelines as Part of the MASP chapter in Volume 2 of the Draft County Development Plan. DM Standard 30 relates to setback with respect to Building lines. Within urban areas there may be some flexibility with respect to setback and this is covered as part of the DM standards with respect to Chapter 3 Placemaking, Regeneration and Urban Living. As per OPR Recommendation No. 8. It is not considered appropriate to have a standard buffer zone of 100m to all wastewater treatment plants, as one size fits all standards cannot apply as different treatment plants will require different setbacks depending on a number of factors. Such a policy would be overly prescriptive and may lead to an impediment to permitting appropriate development. Irish water, as the governing body on municipal WWTP, have indicated that there is no justification for such a setback in the majority of situations and that all

		3m2 to be excessive and should be adjusted. The submission would welcome the inclusion of DM Standard 32 (i) relating to the visual impact of car parking, requiring parking to be placed behind buildings where possible and the use of screening and planting to soften car parking. Buffer Zone Standard – Wastewater Treatment Plants It is requested that a buffer zone standard of 100m setback buffer zone for development in proximity to Waste Water Treatment Plants is set as the standard for the entire County. The submission requests that uniform standards and policies are applied throughout the County to avoid ambiguity and to provide clear and concise guidance on buffer zone standards and on the appropriate maintenance regime and standards that should apply to private and communal WWTP's.	applications will be dealt with on a case by case basis whilst always ensuring that public health is paramount. Chief Executive's Recommendation: As per Recommendation No. 8.

59. The fourth summary (p. 774) is as follows:

GLW-C10-608	Baile Bhruachláin Teoranta & Baile Éamoinn Teoranta	A comprehensive submission has been received which relates to the whole Conamara Region. In relation to the town of Maigh Cuilinn, the submission seeks to rezone a parcel of land located to the west of the N59 from Agricultural to Residential Phase 1. A justification for this rezoning is provided.	Chief Executive's Response: The subject lands are zoned Agriculture. It is not considered appropriate to zone the lands Residential Phase 1. In relation to Residential Phase 1 there is a quantum of lands that are required as outlined in Chapter 2 Core Strategy, Settlement Hierarchy and

		The locational advantages including scenic beauty and access to future green and blue infrastructure/tourism are also referenced as part of the submission. The wider needs of the Conamara Region such as improved infrastructure are also set out within the submission. The submission calls for improved public realm and facilities in Maigh Cuilinn including the addition of a new Secondary School and an enlarged Primary School, bypass, sports facilities and other infrastructural improvements Promote Maigh Cuilinn as a market town that acts as a service hub.	Housing Strategy. In accordance with table 2.9 there is a requirement of 8.75ha of Residential Phase 1 lands. As per the Draft Plan this quantum of lands has been identified and therefore it is considered that the request to zone additional Residential Phase 1 is not appropriate in this instance. In addition, Chapter 11 Community Development and Social Infrastructure supports the provision of educational and community facilities and there are also policy objectives within the Maigh Cuilinn plan that supports the delivery of educational and community facilities. Chief Executive's Recommendation No Change.

60. The fifth summary (p. 805) is as follows:

GLW-C10-608	Baile Bhruachláin TEO	This submission relates to lands that are outside the Draft Plan boundary. It is requested that these lands would be zoned a use similar to Tourism due to the significant potential within this area for heritage and tourism assets. Reference has been made to applications for heritage signage relating to An Sruthán Pier and the Marine and Cultural Heritage Centre on the subject lands. The subject lands are currently being used for boat storage. It is considered that the Draft Plan in relation to the promotion of tourism and realising the untapped	Chief Executive's Response: The subject lands are removed from the plan boundary and it is considered that there is no justification to include these lands. There is no connectivity from the plan boundary to these lands. There is an extant planning application 21/225 to erect and install signage for tourist information and orientation at An Sruthán pier as a site of maritime cultural heritage significance. The principle of a tourism asset at this location has been acceptable based on the planning application under 21/225 for signage

		potential of tourism across the region does not go far enough to align accordingly with the RSES and the Failte Ireland Masterplan.	etc. It is considered that the zoning of these lands would not be in accordance with the proper planning and development of the area. Chief Executive's Recommendation: No Change.

61. The sixth summary (p. 806) is as follows (there is no objection to this summary):

GLW-C10-608	Baile Bhruachláin Teo	The subject lands are located on the eastern edge of An Spidéal village. The lands measures 2.6ha. It is stated that these lands have been subject to previous planning applications and are currently subject to a mix of zonings in the development plan subject to Variation No.2 b. It is confirmed that these zonings (Open Space/Recreation and Amenity, Village Centre, Community Facilities and Residential Phase 2) have been carried through into the Draft Development Plan 2022-2028. Three specific points have been raised in relation to these lands: -Flood Risk Mitigation -Rezoning of the subject lands to aid the creation of a tourism hub -Community gain benefit of the redevelopment of the site. It is acknowledged that the lands zoned to the south of the site is zoned open space are covered by a flood risk zone, however it is stated that there is an engineering solution to deal with flood risk. Flood Risk	Chief Executive's Response: The SFRA undertaken at Plan level provides an appropriately strategic assessment of flood risk within the village of An Spidéal in compliance with the 'Planning System and Flood Risk Management – Guidelines for Planning Authorities 2009'. It considers, among other things, available, published information on flood risk. In order to inform the Stage 2 assessment, the village was inspected on foot by experienced professionals (lands were visited in November 2020/December 2020) to examine, inter alia, the potential source and direction of flood paths from fluvial and coastal sources, locations of topographic and built features. The undertaking of the SFRA and the application of the Constrained Land Use Zoning is an appropriate approach in meeting the requirements of the Guidelines and protecting human life, property, and other receptors from the effects of flood

		Assessment has been submitted. It is requested that the following rezoning would occur: • Open Space/Recreation and Amenity lands would be re-zoned Village Centre • Residential Phase 2 lands to be rezoned Residential Phase 1	events. It is therefore considered inappropriate to zone these lands Village Centre. The request to zone the lands as a Tourist Hub , the use associated with tourism can be accommodated subject to compliance with the Land Use Matrix on Village Lands. In relation to the request for additional Residential Phase 1 lands there is a requirement of 2 ha of Residential Phase 1 lands. The quantum of Phase 1 lands in An Spidéal is in full compliance with the Core Strategy as outlined in Chapter 2 Core Strategy, Settlement Hierarchy and Housing Strategy. It is considered that the subject lands zoned Residential Phase 2 is appropriate in this instance. Chief Executive's Recommendation: No Change.

62. This is not some sort of casual or back-of-an-envelope *pro forma* sentence or two. The applicants' points are considered in some detail and taken seriously – indeed in many instances the word count for the applicants' position exceeds that for the CE response.

63. By definition a summary leaves a lot out – where a 100+ page document is being summarised in a few hundred words that involves omitting a massive amount. The process has to be workable. The CE has to have a lot of latitude in summarising under such circumstances, if the report isn't to be impossibly long. Anyway a dissatisfied party will always be able to complain about *something* been left out. The CE here didn't exceed the wide margin of discretion that must be inherently involved.

64. As the council correctly submits (para. 27 of submissions, relating to Maigh Cuilinn):

> "the summary identifies the fundamental thrust of the submission – that the portion of the land identified in Moycullen which was owned by the First Named Applicant should be zoned residential instead of agricultural and that a justification supporting that submission had been supplied".

65. It is not an obligation of s. 12(4) to set out the analysis of the entity making the submission as to why they are looking for what they are looking for. The core point is included – rezoning to residential. The rest is detail.

66. Likewise in relation to the An Spidéal village site, the CE specifically said (pp. 806-807) that "it is stated that there is an engineering solution to deal with flood risk". This acknowledges a central point made by the applicants. Micro-detail isn't necessary.

67. The problem with the applicants' position is that it is *always* possible to comb through a submission, of whatever length, and find micro-sub-points that are not addressed. Therefore every summary is vulnerable to this sort of analysis, in exactly the same way that every decision is vulnerable to some sub-point advanced by an applicant not being dealt with by way of reasons. If

certiorari is there for the asking on the basis of omissions of this kind, then the business of central or local government or the administrative state generally simply can't be operated to such a standard.

68. That conclusion is doubly valid where the context is that the CE divided the applicants' submissions by theme and area, and set them out in six separate sections in the report. The volume of material speaks for itself, as does the fact that four of the six summaries are not objected to in the pleadings. Such a context demonstrates that reasonable efforts were made by the CE in representing the applicants' concerns.

69. Even if I am wrong on all that, and even if, counter-factually, there was a legal breach, there are two reasons why *certiorari* isn't appropriate.

70. Firstly, the members were not wholly dependent on the summary. They also had access to the full submissions. The objection was launched in oral submissions on the implausible basis that the members were "hamstrung", "hoodwinked" and "blindfolded" by the lack of detail in the CE's summary. That is an exaggeration and views the whole thing as an academic exercise rather than by asking how the problem could have been dealt with in practice at the time. The answer to that is – quite easily. The members in such a situation have access to the submissions themselves, so any member motivated to take an interest in any given issue can and presumptively does go to the detail of the submission itself rather than give up if the summary is insufficiently extensive. The summary is a help but doesn't stop anyone looking into anything if they want to or indeed if their attention is drawn to the issue otherwise than by mere reliance on the summary.

71. In fact the council did a lot more than simply make the submissions available. As pleaded at para. 18 of the statement of opposition:

> "18. The Council had regard to flooding issues in Spiddal and undertook a Strategic Flood Risk Assessment ('SFRA') in respect of same and the submissions, including the submissions on behalf of the Applicants were made available to the Councillors both on the Council's website (www.consult.ie). In fact, as can be seen from the Minutes of the 21st April 2022 the Director of Services, Mr. Michael Owens, issued a reminder to all the Councillors that all the submissions could be viewed on www.consult.ie. The Councillors were informed of and aware of the submissions and they were further discussed including at ten separate workshops with the Councillors held between the 9th and 26th November, 2021 prior to the consideration of the Chief Executive's Report on Submissions received with respect to the draft Development Plan and, in particular, at a workshop held with Councillors on Thursday the 11th day of November, 2021 where Chapter 2 Volume 2, of which an Spidéal/Spiddal forms part, was considered."

72. That is verified on affidavit on behalf of the council (Mr Brendan Dunne, senior executive planner, para. 2), so if the applicants wanted to challenge that they would have had to do something. They didn't do anything, other than make submissions, but as the council correctly says at para. 76 of their written legal submissions:

> "The Applicants cannot impugn by way of legal submission the contents of a Workshop they have not troubled themselves to interrogate by way of the procedures available to them."

73. The second problem for the applicants, even if there is a legal breach, is that a judicial review applicant can't slump into complete passivity at the relevant time and then slink along later to claim relief from the court: *T.T. (Zimbabwe) v. The Refugee Appeals Tribunal* [2017] IEHC 750, [2017] 10 JIC 3105 (Unreported, High Court, 31st October 2017); *McMonagail v. Ireland and Ors.* [2023] IEHC 223, [2023] 4 JIC 2809 (Unreported, High Court, Ferriter J., 28th April 2023), in particular paras. 109 to 114 which discuss an applicant's failure to marshal relevant evidence; *Hughes v. Dublin City Council* [2024] IEHC 344, [2024] 6 JIC 1202 (Unreported, High Court, 12th June 2024). If the applicants had any real and genuine grievance about the summaries in October 2021 they could have done a lot about it at the time. The sensible, obvious and normal thing to have done would be to write to the members drawing their specific attention to the issue and setting out their position in more detail. That would have cost nothing by email or a few postage stamps by hard copy. The applicants didn't do that – they did nothing.

74. In such matters, the law helps those who help themselves. Benjamin Franklin made the same point about the gods, as did Euripides in *Ἰφιγένεια ἐν Ταύροις (Iphigenia in Tauris)* (414-412 BCE) line 913 (at least in the poetic translation by Prof Gilbert Murray, Regius Professor of Greek, University of Oxford) (https://www.gutenberg.org/cache/epub/5063/pg5063-images.html):

> "σθένειν τὸ θεῖον μᾶλλον εἰκότως ἔχει
> (he who strives
> Will find his gods strive for him equally)."

75. Whether one regards the foregoing as creating an inference that there was no real grievance with the summary at the time, or as indicating that any error was harmless, or that the applicants had other remedies such as drawing attention to the full submissions, or as being a basis for the exercise of discretion against *certiorari* at this stage, it all comes to the same thing.

76. The applicants suggest that corresponding on the issue would have been "*ad hoc*" and non-statutory and would have involved taking into account an "invalid" CE report. This is a classic applicants' fallacy summarised in the concept of the Metaphysics of Invalidity – the idea that "invalidity" is an all-or-nothing idea and that once there is one false move, everything else after that must be cancelled and treated as a legal nothing. But that isn't the way an ordered society or an ordered legal system can function. Whether something is valid or invalid isn't an absolute – one has to look at issues such as whether it is duly challenged, whether there were other remedies, whether the problem was rectified or was capable of rectification, whether there was any real issue or objection at the time, and whether ultimately any discretion should be exercised in favour of relief. Judicial review is, ultimately, a branch of equity, even bearing in mind that in some cases relief is nearly automatic. This isn't such a case.

77. The applicants make the valid point that the time to challenge an intermediate decision is at the stage of the final decision. That is not in doubt. The issue is not the lack of a judicial review challenge in 2021 but the lack of any attempt at rectification of the problem in 2021, whether by correspondence or otherwise. One doesn't have to protest in every case but only where such protest would have a substantial prospect of achieving a remedy. Here that was absolutely the case – at the zero cost of an email, the applicants could have informed members of any missing detail of their submission. They didn't do that. So this isn't a serious ground on which *certiorari* could be granted, even if there had been a legal breach, which there wasn't.

Core ground 2 – lack of reasons

78. Core ground 2 is:

"Core Ground No. 2 - The Decision is invalid by reason of the failure of the elected members to give reasons for their decision to oppose the recommendation of the Chief Executive in his report dated March 2022 in relation to Material Amendment No. RSA LUZ Sruthán Quay 19.1, i.e. that the lands should not be zoned as per the said Material Amendment, and instead to adopt the said Amendment. In consequence, the decision is contrary to the requirements of fair procedure and natural justice, and is unreasonable and invalid."

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

"Core Ground 2 – An Sruthán/Carraroe

Applicants' Position:

18. The impugned decision to is invalid by reason of the failure of the elected members to give reasons for their decision to oppose the recommendation of the Chief Executive in his report dated March 2022 in relation to Material Amendment No. RSA LUZ Sruthán Quay 19.1.

19. The Fourth and Fifth Applicants are the owners of lands in the vicinity of An Ceathrú Rua / Carraroe, and in particular, a landholding immediately west of Sruthàn [*sic*] Quay. In the Applicants' submission made on 28 July 2021 on the draft Development Plan, the Applicants proposed that the landholding behind Sruthàn Quay should be rezoned to 'T' – Tourism. The rationale for this proposal is set out at pages 15 – 17 of the Applicants' submission dated 28 July 2021 (PDF pp.545, 546).

20. In the report of the Chief Executive of October 2021, at page 805 (PDF p.1458), the Applicants' submission is fairly summarised and the Chief Executive recommended no change to the zoning.

21. By resolution in December 2021 / January 2022, and without notice to the Applicants, the elected members proposed the change of land use zoning of the Applicants' lands to 'Open Space, Recreation and Amenity'. This was opposed by the Chief Executive who recommended, following further consideration, no alteration (Amendment No. RSA LUZ Sruthán Quay 19.1).

22. However, in breach of their Christian/Killegland obligation, the elected members rejected the Chief Executive's recommendation without giving any reasons for such rejection. In such circumstances, the Applicants' position is that the decision was made contrary to fair procedures and natural justice, and in breach of the obligation to give reasons and, as a consequence, is unlawful, invalid and of no legal effect.

23. The Council contends that there is no obligation under PDA 2000, s. 12 to provide reasons for not agreeing with the Chief Executive's recommendation (SOO, §35). However, this ignores the fact that in Christian the obligation to give reasons in these circumstances was implied notwithstanding the absence of express statutory provision.

Respondent's position:

24. No submission was made by or on behalf of any Applicant with any interest in the lands at Sruthán Quay and the MKO submission of July 2021 was not made on behalf of any such party and thus no complaint can be maintained as to how the MKO submission of July, 2021, in so far as it related to lands at Sruthán Quay/Carraroe was summarised by any party with a sufficient interest in same. The Applicants do not have sufficient locus standi to make

any point in relation to lack of reasoning of the elected members as they were opposed to the Chief Executive's recommendation in any event and were themselves advancing a different amendment.

25. There is no obligation under Section 12 of the Planning and Development Act, 2000 to provide reasons for not agreeing with the Chief Executive's recommendation in the circumstances of the present case and in particular where the members had already resolved to change the zoning of the lands in question (which decision of December 2021 / January 2022 predated the report of the Chief Executive of March 2022 upon which the Fourth and/or Fifth Named Respondents seek to rely. The recommendation by the Chief Executive that the lands should remain unzoned amounted to a proposed reversal of the status quo ante namely the decision which had already been made by the elected members, i.e. to zone the lands for open space in the draft Development Plan. Further, the Applicants were on notice of the relevant amendment, were invited to make a submission and did in fact do so and sought a different outcome from that suggested by the Chief Executive."

80. In the draft plan the land was unzoned. At the material amendment stage, a motion (material alteration RSA LUZ Sruthán Quay 19.1) was passed to zone the land as OS – open space.

81. The minutes of the meeting of 12th January 2022 set out a planning justification for the material amendment. The amendment was effected by motion moved by Councillor Ó Cualáin by way of motion to the effect that the relevant lands should:

"…be zoned 'Recreation and Amenity Area' and to have it designated as a public amenity for leisure, tourism and for community enjoyment. It is noted that Céibh an tSrutháin is of high scenic amenity and a historic site".

82. That motion, which was passed, sets out a sufficient reason in the circumstances, especially bearing in mind that the CE wasn't suggesting any alternative specific zoning. The "disagreement" was whether to leave the land unzoned or to give it an open space zoning. The planning rationale provides an acceptable reason as to why OS zoning was appropriate.

83. A submission was made by the first, third and fourth applicants in relation to the material amendment (ref. GLW-C20-213). The submission sought instead a zoning of T – tourism.

84. The CE's report (inadvertently omitting reference to the fourth applicant) states that the submission was made by the first and third applicants. It concluded:

"The subject lands were not zoned in the Draft Galway County Development Plan 2022-2028. These lands are removed from the settlement boundary of An Cheathrú Rua. During the course of the Council Meeting in December /January 2022, the Elected Members by resolution zoned these lands Open Space, Recreation & Amenity. The Chief Executive considers that there is no justification for the zoning of these lands as they are remote and isolated from the village centre. It is considered that these lands should not be zoned as per Material Alteration RSA LUZ Sruthán Quay 19.1."

85. This then came back to the members on 5th May 2022. The members ultimately decided to adopt the CDP with the relevant material amendment at that council meeting, so they affirmed their original decision and by necessary implication its reasoning.

86. The minutes of the meeting of the 9th of May 2022 record that item 1 of the agenda was to "consider the Chief Executive's Report on the Submissions received on Material Alterations to the Draft Galway County Development Plan 2022-2028 under Part 11, Section 12(5) and (6) of the Planning and Development 2000". A number of other ancillary motions were adopted and then the development plan was adopted in the following terms:

"Having considered the Plan, the Proposed Material Alterations, the CE Reports on submissions received (including that on the proposed material alterations) and ...

- The Strategic Environmental Assessment (SEA) Environmental Report for the Draft Plan
- The Appropriate Assessment (AA) Natura Impact Report for the Draft Plan
- The Strategic Flood Risk Assessment (SFRA) for the Draft Plan
- The SEA Environmental Report for the Proposed Material Alterations
- The Natura Impact Report for the Proposed Material Alterations
- Written submissions relating to SEA, AA and SFRA made during the Plan preparation process
- Ongoing advice on SEA, AA and SFRA from the Council's agents
- The final, consolidated Natura Impact Report
- The final AA Determination

In accordance with the provisions of Section 12(10) of the Planning and Development Act 2000 (as amended), the members agree, by resolution, to make the Plan, as recommended by the Chief Executive and as further modified by way of motions and resolutions at the Special Council Meeting on 20th and 22nd April 2022 and 4th , 5th and 9th May 2022 and

to proceed in accordance with Section 12(12) of the Planning and Development Act 2000 (as amended) to publish notice of the making of the Plan. …"

87. This was passed 36-0. There was nothing further to displace the valid reasons already given. The complaint of lack of reasons made in this ground is without substance.

88. In *Killegland Estates Ltd v. Meath County Council* [2023] IESC 39, [2023] 12 JIC 2109 (Unreported, Supreme Court, 21st December 2023), Hogan J. noted at para. 66 that in the trial decision in that case I considered that it would be best practice to note the rationale for going against the CE in the minutes – and that was in fact done precisely in that way in the present case (in the minutes of 12th January 2022). Hogan J. went on to say at para. 67 that "the reasons for such a decision should be properly evidenced and justified. Accordingly, the reasons for such a decision should either be clear from the resolution itself or from the documentation before the councillors when the making of the resolution was discussed". If the reason is in the minutes as set out in a motion that was before the members when making the decision, the test is clearly satisfied (although there would be other ways to satisfy it). There is nothing in this point.

Core ground 3 – lack of access to agenda and minutes

89. Core ground 3 is:

"Core ground No. 3 –The Decision is invalid by reason of the failure of the Respondent to make available to the Applicants, over a prolonged period of time, the minutes and agendas of special meetings of the Council. In consequence, the decision was made in breach of fair procedures and/or in breach of natural and constitutional justice, in so far as the Applicants were unlawfully denied access to an effective public consultation process during the course of the statutory process leading up to the decision of 9 May 2022 to adopt the New Plan, as a result of the matters referred to under the Particulars of Core Ground no.3, below. Further, or in the alternative, the Respondent acted in breach of its obligations under article 28A of the Constitution of Ireland which provides that the State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law, which in the present context involve the exercise and performance of the respondents statutory functions in relation to the review, preparation and adoption of the statutory development plan pursuant to sections 9-12 of the 2000 Act."

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

"Core Ground 3 – No access to Agendas and Minutes of Council Meetings

Applicants position:

26. The Decision is invalid by reason of the failure of the Respondent to make available to the Applicants, over a prolonged period of time, the minutes and agendas of Special Meetings of the Council.

27. The Applicants sought relevant information, during all material stages of the process of the making of the New Plan before it was finally adopted, which was not made available to the Applicants or the public generally. At the date of the within proceedings issuing, the minutes of the Special Meetings of the Council were not formally available to the general public.

28. The Council contends that the Applicants have no legal entitlement to access the minutes of the meetings relating to the making of decisions concerning their lands during the development plan process. However, this legal entitlement arises both from the democratic nature of the process and the entitlement of the public to know the material and reasons upon which decisions of both the executive and elected members of the Council were based. The Affidavit of Pamela Harty sworn on 27th January 2023 (§24 et seq.) sets out why access to the minutes were important and specifically identifies the points that the Applicants could have made (in particular, in relation to residential zoning at Moycullen) if it had access to the minutes.

29. In consequence, the decisions made in respect of the Applicants' lands under the New Development Plan were made in breach of fair procedures and/or in breach of natural and constitutional justice, in so far as the Applicants were unlawfully denied access to an effective public consultation process during the course of the statutory process leading up to the decision of 9 May 2022 to adopt the New Plan, as a result of the matters referred to under the Particulars of Core Ground no.3, as set out in the Amended Statement of Grounds.

30. The Applicants further plead that the Respondent acted in breach of its obligations under article 28A of the Constitution of Ireland which provides that the State recognises the role of local government in providing a forum for the democratic representation of local communities.

Respondent's position:

31. Core Ground 3 does not disclose any legal complaint.

32. The Applicants were not refused access to the Minutes of Special Meetings of the elected Members of Council and the minutes of such meetings are made available to the public on the Council's website when they have been prepared and formally adopted. There is no statutory obligation to publish the minutes of such meetings within any given time frame, or at all.

33. The Applicants have no legal entitlement to access the minutes of Council meetings and that access to same is not part of the public participation envisaged in sections 10 and 12 of the 2000 Act. Without prejudice to this position, any alleged failure to publish the Minutes did not have and could not have had the effect of limiting the ability of the Applicants to make submissions during the public consultation phase of the plan. In relation to the issue of a number of Special Meetings being held online, the Respondent points to the Covid-19 pandemic and considers that the Applicant would have been aware that plenary meetings are held on the 4th Monday of every month."

91. Paragraph 14 of sch. 10 to the Local Government Act 2001 provides:

"14.—(1) Minutes of the proceedings of a meeting of a local authority shall be drawn up by the meetings administrator.

(2) The minutes shall include—

(a) the date, time and place of the meeting,

(b) the names of the members present at the meeting,

(c) a list of the senior employees of the local authority present at the meeting,

(d) reference to any report submitted to the members at the meeting,

(e) where there is a roll call vote, the number and names of members voting for and against the motion and of those abstaining,

(f) particulars of all resolutions passed at the meeting, and

(g) such other matters considered appropriate.

(3) A copy of the minutes of a meeting shall be sent or given by the meetings administrator to each member of the local authority.

(4) Minutes of a meeting shall be submitted for confirmation as an accurate record at the next following ordinary meeting, where practicable, or where not, at the next following meeting and recorded in the minutes of that meeting.

(5) When confirmed, with or without amendment, the minutes of a meeting shall be signed by the person chairing the meeting they were submitted to for confirmation and any minutes claiming to be so signed shall be received in evidence without proof.

(6) Until the contrary is proved, every meeting in respect of the proceedings of which minutes have been confirmed shall be deemed to have been duly convened and held and all the members at the meeting shall be deemed to be duly qualified.

(7) A copy of the minutes of a meeting when confirmed in accordance with subparagraph (5) shall be open to inspection at the principal offices of the local authority and any person may inspect and make a copy of, or abstract from, the minutes during the usual office hours of the authority.

(8) A copy of the minutes shall be provided to any person applying for them on payment of such reasonable sum, if any, being a sum not exceeding the reasonable cost of supplying the copy, as may be fixed by the local authority.

(9) Each local authority shall make proper arrangements for the safe keeping of the minutes of the authority."

92. Section 45 of the 2001 Act provides for public attendance:

Attendance of public and media at meetings.

"45.—(1) In this section—

'media' includes accredited representatives of local and national press, local and national radio and local and national television;

'members of the public' means any person who is not attending the meeting at the request of the local authority.

(2) Subject to subsections (3) and (5), members of the public and representatives of the media are entitled to be present at a meeting of a local authority.

(3) Where a local authority is of the opinion that the absence of members of the public and representatives of the media from the whole or any part of a particular meeting is desirable because—

(a) of the special nature of the meeting, or of an item of business to be, or about to be, considered at the meeting, or

(b) for other special reasons,

the authority may by resolution decide to meet in committee for the whole or a part of the meeting concerned, where the authority considers that such action is not contrary to the overall public interest.

(4) (a) It is necessary for the passing of a resolution under subsection (3) that at least one-half of the total number of members of the local authority concerned vote in favour of the resolution.
(b) A resolution under subsection (3) shall indicate in a general way the reasons for the resolution and those reasons shall be recorded in the minutes of the meeting.
(5) A local authority may, by standing orders, regulate the right of members of the public and representatives of the media to be present at meetings and, in particular and without prejudice to the generality of the foregoing, may—
(a) taking account of available space, limit the number of persons to be admitted,
(b) make rules governing the conduct of persons present at meetings,
(c) provide for the removal of members of the public who interrupt the proceedings or who otherwise misconduct themselves, or
(d) make rules in relation to the taking of photographs or the use of any means for recording or relaying the proceedings as they take place or at a later stage.
(6) Nothing in subsection (5), other than paragraph (a), shall be read so as to enable a local authority to limit the attendance of representatives of the media, and paragraph (a) shall not be read as enabling a local authority to prohibit the attendance of such representatives."

93. The position regarding availability of minutes was set out in a document prepared by the parties which I have slightly expanded as follows:

Document	**Reference**	**When became available**
Minutes of Special Council meetings to consider Chief Executive Report of October 2021: [in December 2021/ January 2022]	Exhibit GMCC1, Tab 8 **Hyperlinked PDF book 1**	Applicant states not available until a date in August 2022, see: - Verifying Affidavit of Gus McCarthy, sworn 5 August 2022, paras. 10(c),11 and 12. - Verifying Affidavit of Ronan Barrett sworn 5 August 2022, paras. 35, 36 The Council says that they were available from 25th April 2022 at the Council Offices. [i.e., the date on which they were approved by members] They were made available on 6th July 2022 and again once an IT issue had been resolved on 29th July 2022 (Affidavit of Mr Dunne at §15)
(a) Meeting of 6 December 2021	Book 1, p.1987	Ditto
(b) Meeting of 10 December 2021	p.2009	Ditto
(c) Meeting of 13 December 2021	p.2025	Ditto
(d) Meeting of 17 December 2021	p.2048	Ditto
(e) Meeting of 20 December 2021	p.2078	Ditto
(f) Meeting of 5 January 2022	p.2119	Ditto
(g) Meeting of 6 January 2022	p.2176	Ditto
(h) Meeting of 7 January 2022	p.2313	Ditto
(i) Meeting of 10 January 2022	p.2412	Ditto
(j) Meeting of 11 January 2022	p.2557	Ditto
(k) Meeting of 12 January 2022	p.2687	Ditto
(l) Meeting of 13 January 2022	p.2882	Ditto
Minutes of the Ordinary meetings:	Exhibit PH3 to the Second Affidavit of Pamela Harty - **Hyperlinked Book 2** p.5731	Affidavit of Pamela Harty sworn 27 January 2023, paras. 9 – 14, and 16-18 Hyperlinked PDF **Book 2**, p.4563

(a) Meeting of 28 February 2022 (b) Meeting of 7 of March 2022 (c) Meeting of 28 of March 2022 (d) Meeting of 25 of April 2022	5732 5741 5764 5790	Date of approval and availability unclear but in each case not until the following monthly meeting at the earliest, which in the case of the earliest of the meetings would have been after the close of the period for submissions on material amendments.

94. I don't need to resolve the issue as to exactly when the minutes of the special meetings were available because on any view it was after the close of the period for submissions on the material amendments (*i.e.*, it was April 2022 for the special meetings and 7th March 2022 for the February 2022 monthly meeting at the earliest – submissions on the material amendments closed on 4th March 2022).

95. One is naturally concerned about alleged delays in making available of documents, particularly where they constitute environmental information for the purposes of directive 2003/4/EC of the European Parliament and of the Council on Public Access to Environmental Information. That said, until approved by members, there are no minutes, only draft minutes. The council can't be faulted for not publishing *minutes* prior to their coming into legal existence on being approved.

96. What might have been more useful would have been to seek access to meeting papers including motions and reports, but the applicants didn't go looking for those, so can't really expect *certiorari* on that basis.

97. As signalled earlier, the applicants plead that:

> "35. On 3 August 2022, the Applicants legal advisors identified a means of access to a directory of files on the 'extranet' of Galway County Council, which held PDF copies of 113 documents comprising agendas and minutes of the meetings of the Council from 2014 up to 2022. It is not clear whether this comprises all of the agendas issued, and meetings held. As at the date the issue of proceedings, the Council website contained a link which directed the public seeking access to agendas and minutes of meetings, to a page with no content."

98. There are two aspects to this – firstly the fact that the public-facing page had no content. That appears sub-optimal. Secondly the fact that access to hidden directories was possible – I emphasise that this did not involve infringing any security measure. That also appears sub-optimal.

99. Returning to the pleaded legal basis for *certiorari*, the applicants don't rely on EU law, the right to good administration under the Charter, the Aarhus Convention, or anything else other than:

(i) "fair procedures and/or in breach of natural and constitutional justice";
(ii) the council's "obligations under article 28A of the Constitution"; and
(iii) an unparticularised "right to effective public participation in the development plan making process" (sub-ground 27).

100. **Breach of fair procedures** has not been made out. The lack of provision of documents under FOI on the basis of incorrect information is sub-optimal but that was just human error and it doesn't mean that the plan is invalid. The applicants were not deprived of access to the actual information – the council meetings are held in public and they could simply have attended, as many interested parties do in such situations. As the council pleads at para. 45 of the statement of opposition:

> "Plenary meetings are always held on the 4th Monday of every month at 11am (or the Third Monday if the 4th is a bank holiday) as would have been known to the Applicants. In addition the dates for special meetings would have been agreed in advance at the preceding Plenary Meeting and members of the public can attend at the meeting place of the council (Currandulla Community Hall) and could also apply for access to the on-line meetings through the Council."

101. The affidavit verifying that hasn't been effectively contested.

102. In any event the legislative duty on the council is to make minutes available for inspection. The applicants haven't established evidentially that there was any breach of that. The provision relied on doesn't compel the council to make agendas or draft minutes available, and no legal basis to the contrary has been properly pleaded.

103. The applicants' first request for council minutes was made in February 2022 by telephone (see 2nd affidavit of Ms Harty para. 8). So given the timeline, the only ground that could even potentially have been affected by any breach of rights arising from the reply to that is ground 3 relating to Céibh an tSrutháin alone.

104. Insofar as the second submission regarding the draft plan is concerned, the papers disclose a complaint of breach of fair procedures due to lack of minutes – but what prejudice? The draft plan was as it was at that stage in February 2022 and had not been the subject of material amendment in relation to the other sites. So at that point no further submission could be made in relation to the other sites. No request for minutes had been made at the point when the council was dealing with those other sites and when a submission would have been a legal option.

105. As regards getting the minutes for the purposes of the third submission, there is a huge *esprit d'escalier* feeling to the applicants' complaints.

106. At para. 10 of her affidavit, Ms Harty says: "[i]n particular, despite multiple attempts, I was unable to locate or otherwise access minutes of the Special meetings of the Council at any stage following the making of our second submission dated 28 July 2021 on behalf of the Applicants". But the second submission had been made at that stage – getting the minutes was neither here nor there at that point. The fact that she repeats complaints about not getting the minutes after the making of submissions in many subsequent paragraphs doesn't add anything to the point. There is no need for me to rehearse those repetitions.

107. She goes on to say at para. 13:

> "On 4th of February 2022, the Proposed Material Amendments to the Draft Development Plan were published. Although the Material Alterations resulted from the Council meetings that were apparently held prior to their proposal, we (at MKO) could not consider how the detail of our second submission dated 28 July 2021 was considered and decided upon in respect of each client site. Inevitably, that prejudiced our ability to advise our client as to how to proceed. In particular, it was not apparent as to whether the elected members had provided any planning policy justification for the material amendments in respect of Maigh Cuillinn (Moycullen). Accordingly, our third submission of 4 March 2022, on behalf of our client was hampered by our lack of access to the minutes."

108. But that is sheer assertion at a generalised level. The point is about what the applicants claim is missing – there is alleged to have been no planning justification. That alleged lacuna didn't hamper the making of a submission – the applicants were fully able to argue as to why a T zoning was preferable to OS. Nothing crucial has been pointed to that would have been said had the specific planning rationale been available directly from the council – and in the ordinary course of things it could have been obtained from members had they been asked.

109. She says at para. 17:

> "When we followed the links to the webpage(s) where these minutes and agendas were supposed to be provided, there was no content or links to such content. I made contact with the Council to obtain copies of the minutes and agendas but was told they were not available yet. My colleagues and I were at a loss to resolve this difficulty. Indeed, I understand that our client, Ronan Barrett, was not only unable to access the same information, but that having made a request for access to the minutes through a Freedom of Information request, that request was refused, the reason given being that the minutes were already publicly available. I say that as far as I was concerned, that was incorrect. That information was not in fact available online on the date of that refusal and did not become available until around the time our client issued legal proceedings in early August."

110. The fact that the web links were blank and that the applicants' advisers were at a loss is unfortunate but we are talking here about the situation in July 2022 which is after the adoption of the plan.

111. Any irregularity at this point is a *post hoc* failure to publish material, and doesn't itself establish any failure of fair procedures in substance during the process either at all or in such a way as to come remotely close to warranting an order quashing the plan.

112. At para. 22 she says:

> "The fact that the public were never made aware of these concerns about the accuracy of the minutes while the development process was ongoing due to the unavailability of the minutes for inspection by the public gives rise to additional concerns about the process. The last paragraph in the extract above also gives particular cause for concern in so far as it indicates that the rationale and reasons for certain decisions of the Members were not discussed at the Development Plan Meetings but were the subject of written submissions by the Elected Members."

113. But this is highly generalised. Members are not obliged to agree the minutes as presented, and have the right to seek to defer them to discuss. The fact that individual members might have "concerns" doesn't automatically mean that such concerns are valid ("concerns" can be a slippery thing to deal with in any context as they definitionally shy away from specific factual propositions that can be disproved), and nor does it make the minutes invalid, or the process invalid, or create a legal duty on anybody to make the public aware of such alleged concerns. The volume of minutes ran to over 1000 pages and it was accepted by officials that members might need more time to

discuss them. If a member of a body has an issue with anything circulated, there isn't any obligation to raise that issue at a meeting. The point can legitimately be sent in by written communication. To see some fundamental flaw in fair procedures with what happened here is bordering on conspiracy theorising. "[A]dditional concerns about the process" is a threadbare foundation on which a court could grant an order of *certiorari*.

114. At para. 28, she complains that the CE report "did not provide any evidence of any consideration by him as to whether the proposed zoning of Site Nos. 3 and 5 aligned with the sequential approach for zoning land". That's a complaint about an omission – any submission was perfectly capable of dealing with the sequential approach without needing to know that the CE hadn't addressed that to the applicants' satisfaction already. Thus as regards the complaint at para. 32 that "[i]f MKO had access to the minutes of the relevant Special Meetings, we would have been able to comment on the fact that it was clear from the minutes that the Council had not applied the sequential test to justify the land use zoning changes proposed for Site Nos. 3 and 5 in Material Alteration 8.5d", that was something they were able to comment on based on what was on the face of the decision even without seeing that the minutes didn't add anything. But more fundamentally, once we had got through the material amendment stage, the further discussion was confined to the subject-matter of the material amendments – that is, for present purposes, exclusively the Céibh an tSrutháin site. Issues where the plan was not amended were effectively closed off at that point from further repetitive submissions – the chance to make submissions on such points was on the draft plan. Fair procedures doesn't require a second opportunity to run one's case. The whole notion of making a submission after February 2022 (when the minutes were sought) in relation to the contested zonings at An Ceathrú Rua and Maigh Cuilinn is misconceived. No such submission was possible by that stage

115. A similar point is made in relation to Céibh Sruthán. It is suggested that the motion contains no planning rationale, and had the minutes been available, this could have been pointed out. Firstly that is totally incorrect – there is a planning rationale. But the applicants were fully entitled to argue that there was no valid rationale for the OS zoning if that was their view. Lack of access to minutes – which they claim add nothing – didn't hamper the applicants either at all or in some way that was so fundamental that *certiorari* must be granted.

116. Overall the applicants' complaints are largely about what is missing from the minutes rather than what is in them. By definition they weren't harmed by not being given a vacuum. But more significantly if the applicants really wanted to know the content of the motion that was passed regarding the material amendment setting out a justification, they could have asked any one of 36 councillors for a copy. Sure, that's *ad hoc* and sure it's non-statutory, but isn't that the point of Article 28A – so that stakeholders and residents can have a conduit of information and assistance. The applicants didn't go looking for the information in such a way or in any way other than by calling on the council to produce minutes. But there were no minutes at that stage, only draft minutes, which had no official status until adopted by the members, which didn't happen until a subsequent meeting.

117. The whole argument about minutes is based on something of a misconception anyway. Galway County Council minutes, like those of many and probably most bodies, are not obliged to set out a discursive narrative and do not in fact do so. Rather they record the decision. That is perfectly lawful. Had there been minutes and had those minutes been disclosed at the time, they wouldn't have told the applicants a great deal more than they already knew, and certainly absolutely nothing more than they could have found out with reasonable diligence. There's no obligation to go further than saying something like "after a discussion the motion was passed". That is a sufficient minute.

118. As regards agendas, no request whatsoever was made prior to the proceedings for agendas – the first complaint was in the judicial review. The applicants now seek an order that the plan be quashed – not merely subjected to a declaration, but quashed – because the council didn't provide something they never asked for. That is beyond implausible.

119. The general concept of democratic local government in **Article 28A**, on its own, doesn't, unfortunately, allow the court to infer new rights such as a right to immediate public access to local government documents, just as the term "democratic" in Article 5 of the Constitution is not authority to invalidate legislation by reference to inferred new rights not already recognised in or under more express constitutional text.

120. The **right to public participation** referred to in sub-ground 27 is pleaded in opaque terms without reference to any specific legal basis. All that needs to be said is that the applicants haven't demonstrated any actual breach of their right to public participation in the making of the plan and certainly not a breach arising by reason of the fact that they were not given minutes they sought at a time when those minutes didn't exist by reason of not having been approved.

Summary

121. Prior to concluding, there are aspects about the provision of information that are somewhat sub-optimal, such as the error in the rationale for refusing the FOI request or the alleged blank web pages. But such complaints don't warrant *certiorari* on these pleadings and on these facts.

122. More generally, it might be better if there was a procedure whereby meeting papers would be available online either in advance of or at least promptly following a council meeting, which would provide a formal rather than an informal way to access matters such as the text of motions. It would also be preferable if minutes were more systematically approved at the following meeting and hence made immediately available *qua* minutes thereafter, thus eliminating a delay which might give rise to complaint, or if drafts could be available in the meantime with appropriate disclaimers. Those are issues not limited to this council. In addition, the legislative scheme in para. 14(7) of sch. 10 the 2001 Act providing for inspection of minutes physically is totally out of date. Publication on the web is the standard and most democratic way to publish material, and ideally this legislation and legislation dealing with publication of documents generally would reflect that.

123. For balance, I should also record that I was slightly unnerved that the applicants were able through a URL they stumbled across to access internal and non-indexed web pages created by the council (the extranet). On the face of things it might appear those pages might preferably have been published and so maybe there was some rough justice involved, but given the requirements of GDPR if nothing else (if and to the extent that that potentially applies), access to such matters should be dealt with in a deliberate rather than an accidental way. I would encourage the applicants to advise the council forthwith as to what links are open in this manner so that matters can be regularised. But for balance if nothing else I would also encourage the council to maximise its accessible web publication of relevant documentation.

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

(i) A CE has a wide margin of appreciation in summarising submissions, which can be done on a grouped, themed or geographic basis and does not need to be point-by-point. The council did not exceed that margin in this case, where the applicants' submissions were given generous treatment.

(ii) In any event, even if the submission was impermissibly exiguous, the applicants should not be afforded *certiorari* because the members were not wholly dependent on the summaries, had access to the full submissions and were briefed at various workshops where the issues raised were discussed, and secondly because the applicants made no effort to redress any omissions at the time

(iii) The reason for the Céibh an tSrutháin OS zoning is set out in the motion passed. This is both sufficient in content and sufficiently clear on the record as it is embodied in documents before the members at the material time.

(iv) The applicants sought minutes at a time when the minutes did not formally exist *qua* minutes as they had not been agreed. The minutes were not approved until after the close of submissions on material amendments. The applicants have not demonstrated any breach of fair procedures actually arising as a result, especially where their case is that the minutes did not disclose any information justifying the decisions, where they could have sought the meeting papers from members or officials but did not, and where the process had moved on by the time the minutes were first sought such that the question of making a submission on the properties at An Ceathrú Rua and Maigh Cuilinn no longer arose.

125. For completeness I have considered all grounds advanced but none have merit above and beyond what is set out above, and generally the reasons in this judgment also apply to other sub-grounds. Finally, as the lands in question are located in the Gaeltacht it seems appropriate to respect that by attempting to provide an indicative summary in Irish.

126. Mar achoimre:

(i) Tá corrlach leathan breithiúnais ag an príomhfheidhmeannach chun achoimre a dhéanamh ar aighneachtaí, rud féidir é a dhéanamh ar bhonn grúpáilte, téamach nó geografach agus ní gá go mbeadh sé pointe ar phointe. Níor sháraigh an chomhairle an corrlach sin sa chás seo, áit ar caitheadh go fial le haighneachtaí na n-iarratasóirí.

(ii) Ar aon chuma, fiú má bhí an aigneacht ró-ghearr, níor cheart certiorari a thabhairt do na hiarratasóirí, ar an gcéad dul síos, toisc nach raibh na comhaltaí ag brath go hiomlán ar na hachoimrí, go raibh rochtain acu ar na haighneachtaí iomlána agus cuireadh ar an eolas fúthu iad ag ceardlanna éagsúla ina raibh na saincheisteanna a ardaíodh, agus sa dara háit toisc nach ndearna na hiarratasóirí aon iarracht aon easnamh ag an am a cheartú.

(iii) Tá an chúis atá leis an gcriosú ag Céibh an tSrutháin leagtha amach sa tairiscint a ritheadh. Tá sé seo dóthanach ó thaobh ábhair de agus soiléir go leor ar an taifead mar go bhfuil sé corpraithe i ndoiciméid a bhí os comhair na gcomhaltaí ag an am ábhartha.

(iv) Lorg na hiarratasóirí miontuairiscí ag am nach raibh na miontuairiscí ann go foirmiúil agus nach raibh siad aontaithe. Níor faomhadh na miontuairiscí go dtí tar éis dheireadh na n-aighneachtaí ar leasuithe ábhartha, ach ní raibh sé sin mídhleathach. Níor léirigh na hiarratasóirí aon sárú ar an bpróiseas cuí a tháinig chun cinn, go háirithe nuair a deir siad nár nocht na miontuairiscí aon fhaisnéis ábhartha, ar an dara dul síos toisc go bhféadfaí páipéir na gcruinnithe a lorg ó ionadaithe poiblí, agus sa tríú háit nuair a iarradh miontuairiscí, níor tháinig ceist maidir le leasú a dhéanamh ar chriosú na maoine ar An gCeathrú Rua agus i Maigh Cuilinn a thuilleadh.

Order

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

(i) time be extended for the bringing of the proceedings;

(ii) unless any written legal submission to the contrary is delivered to the court within 14 days, the proceedings be dismissed with no order as to costs;

(iii) the parties be required arrange between them for one of them to notify the Minister of the outcome as soon as possible and in any event within 7 days, on the basis of this being for information only with no requirement to appear; and

(iv) the matter be listed on Monday 18th November 2024 to confirm the foregoing.