THE HIGH COURT

JUDICIAL REVIEW

2018 No. 363 J.R.

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

BETWEEN

AIDAN DAMER

LORETTA DAMER

APPLICANTS

AND

AN BORD PLEANÁLA

RESPONDENT

KILDARE COUNTY COUNCIL

NOTICE PARTY

JUDGMENT of Mr Justice Garrett Simons delivered on 11 July 2019.

SUMMARY

1. These judicial review proceedings seek to challenge a decision of An Bord Pleanála to refuse planning permission for proposed development consisting of (i) the erection of a dwelling house, and (ii) the provision of agricultural buildings and netting to facilitate the production of snails. This proposed activity has been described variously as a "*snail farm*" or a "*heliculture business*".

2. The gravamen of the challenge is that An Bord Pleanála did not properly apply the development plan policies for "*Housing in Rural Areas*". In particular, it is said that the Board erred in its application of the policies in respect of one-off dwellings.

3. It will be necessary to consider the relevant provisions of the development plan in some detail presently. For introductory purposes, however, it is sufficient to note that in order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must meet one of the local need criteria set out in Table 4.3 (a) or (b). The Applicants in the present case had sought to rely on the following criterion.

> "(iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location."

4. The application of this policy to the proposed dwelling house and snail farm ("*heliculture business*") had been addressed as follows by An Bord Pleanála in the impugned decision.

> "[…] The restrictive approach of the Development Plan to housing in such areas is considered reasonable. Notwithstanding the information submitted in support of the application and appeal, including the information in relation to the proposed heliculture business, the Board is not satisfied that a compelling location-dependent need for a dwelling at this location has been demonstrated. In these circumstances, it is considered that the application does not come within the scope of the Development Plan criteria for a dwelling at this location. The proposed development would therefore contravene the provisions of the Development Plan in relation to rural housing, and would be contrary to the proper planning and sustainable development of the area."

5. As appears, the impugned decision merely states a conclusion, i.e. that a compelling location-dependent need for a dwelling at this location had not been demonstrated. The *rationale* for this conclusion is not recorded.

6. In circumstances where the Board Direction indicates that the Board decided to refuse permission generally in accordance with the inspector's recommendation, it is legitimate to have regard to the inspector's report in seeking to identify the Board's reasoning. Unfortunately, however, the inspector's report is unilluminating this regard. See further paragraph 39 below.

7. I am satisfied that the impugned decision—even when read in conjunction with the inspector's report—fails to meet the standard of reasoning required under section 34(10) of the Planning and Development Act 2000 ("*the PDA 2000*"), as most recently interpreted by the Supreme Court in *Connelly v. An Bord Pleanála* [2018] IESC 31; [2018] 2 I.L.R.M. 453.

8. The absence of a proper statement of the main reasons and considerations for An Bord Pleanála's decision frustrates the High Court in the exercise of its supervisory jurisdiction by way of judicial review. In particular, it is not possible on the basis of the decision as formulated to determine whether the *other* grounds of challenge advanced, especially those to the effect that the Board misinterpreted the relevant provisions of the development plan, are well made out. The absence of a proper statement of the main reasons and considerations also makes it difficult for the Applicants to know whether there are any steps they can take, in the context of a *further* planning application, to address the concerns which resulted in the refusal of planning permission.

9. In the premises, I propose to make an order setting aside the decision of An Bord Pleanála and remitting the matter to the Board for reconsideration in the light of the findings of the High Court. The objective of remittal is not that a proper statement of the main reasons and considerations be produced on an *ex post facto* basis. Rather, the appeal is to be reconsidered in its entirety, and in circumstances where the analysis in the inspector's report is inadequate, the Board may wish to arrange to have a further report prepared. The fresh decision—whether to grant or refuse planning permission—should comply with the requirements of section 34(10) of the PDA 2000.

FACTUAL BACKGROUND

10. The Applicants herein are the owners of lands at Daars North, Sallins, County Kildare. The lands were purchased in February 2016

for the sum of €70,000.

11. The Applicants seek to challenge a decision of An Bord Pleanála to refuse planning permission. The proposed development was to consist of the provision of a one-and-a-half storey dwelling house and a single-storey domestic garage, together with the construction of a netting area to facilitate a snail farm, the construction of an agricultural shed and polytunnel. The proposed heliculture business was intended to develop snail-based products including premium organic snail meat, snail egg caviar and snail slime secretion. It was indicated that the business would have two full-time employees in the first year of operation, and it was projected that two additional farmhands would be required during snail egg and mature snail harvesting seasons.

12. The planning application was submitted to the local planning authority, Kildare County Council, on 27 June 2017. Kildare County Council made a decision to refuse planning permission on 18 August 2017. An appeal against this decision was made to An Bord Pleanála on 13 September 2017. The appeal bears An Bord Pleanála reference "PL09.249234". The Board made a decision to refuse planning permission on 13 March 2018. The Applicants instituted the within judicial review proceedings on 14 May 2018.

DEVELOPMENT PLAN

13. The development plan in force at the time that the decision impugned in these proceedings was made is the Kildare County Development Plan 2017 – 2023. The housing policy is set out at chapter 4 of the plan. The policy in respect of "*Housing in Rural Areas*" is set out at §4.12 and onwards.

14. The development plan expressly cites (at page 82) the definition of "rural generated housing demand" from the National Spatial Strategy 2002 – 2020 as follows.

> "Rural generated housing demand arises from persons who are an intrinsic part of the rural area by way of family links to the area and/or who work in a type of employment, intrinsic to the rural economy, which requires them to live in a rural area, to be close to their rural based employment."

15. The functional area of the planning authority has been divided into two "Rural Housing Policy Zones". The application site falls within Zone 1.

16. In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must meet two broad criteria. First, the applicant must (a) be a member of a farming family who is actively engaged in farming the family landholding or (b) be a member of the rural community. In order to achieve this, an applicant must demonstrate a genuine local need to reside close to the family home by reason of immediate family ties, or their active and direct involvement in a rural based enterprise.

17. Secondly, the applicant must meet one of the "local need" criteria set out in Table 4.3(a) and (b) (Schedule of Local Need Categories of Applicant). See pages 90 and 91 of the development plan.

18. The dispute in these judicial review proceedings centres on the second of these two requirements, i.e. the "local need" criteria. It is common case that the specific criterion which the Applicants sought to rely upon is that set out at Table 4.3(b), subparagraph (iii) under the heading "Rural Housing Policy Zone 1".

> "(iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location."

19. The previous development plan, namely the Kildare County Development Plan 2011 – 2017, had contained a similarly worded provision. This is recorded as follows in the inspector's report on the first planning appeal (at pages 3 and 11 of the report).

> "Persons who can satisfy the Planning Authority of their commitment to operate a small scale, full time business from their proposed home in the rural area and that the business will contribute to and enhance the rural community and that the nature of such business/employment is more appropriate to a rural location."

20. As appears, the qualifying words "small scale" have been omitted from the 2017 – 2023 Development Plan, and the enterprise must now be "intrinsically linked to a rural location", rather than merely "more appropriate to a rural location".

AN BORD PLEANÁLA'S FIRST DECISION (17 JANUARY 2017)

21. Before turning to consider the detail of An Bord Pleanála's decision impugned in these proceedings, it should be noted that a planning application in substantially similar terms had previously been made in 2016 (Kildare Country Council Reg. Ref. 16/598). The planning authority's decision of first-instance had been to refuse planning permission. That decision had been appealed to An Bord Pleanála, and the Board also refused planning permission. The Board's decision is dated 17 January 2017 ("*the Board's first decision*").

22. This appeal had been decided by reference to the previous development plan, i.e. the Kildare County Development Plan 2011 – 2017. (The relevant provision of that development plan has been set out at paragraph 19 above).

23. As appears from the inspector's report in respect of the first appeal, the concern at that time appeared to be whether the proposed snail farming business satisfied the requirement under the (then) development plan of being a "full-time" business. The inspector had suggested (at page 12 of her report) that it was not necessary to determine this issue in circumstances where she considered that the proposed development failed a different aspect of the development plan criteria, i.e. the requirement that the proposed development would contribute to and enhance the rural community.

> "[…] I am not inclined to be drawn into the commercial element of the proposal in detail as I do not consider the proposed development offers any enhancement to the local community or will contribute to the local community. I do not believe there is a necessity to locate in Daars North with this particular development, and I do not believe the applicants represent an exceptional case that warrant permitting a one off house at this location. I consider the Board is to have regard to the planning policies outlined in the development plan as stated above. I consider the Rural Housing Policies details in section 4.12 of the development plan to be consistent with the Ministerial Direction, SP5-08 which predates the current county development plan.
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> 7.5 As stated, the applicants reside in Lucan, and have no local links or community connections to Daars North or the wider area. Essentially, they are urban dwellers wishing to relocate to a rural area in Co. Kildare which is under

considerable development pressure from urban generated housing as highlighted in national and local planning policy, and is evident from the number of one off dwelling which can be viewed from maps of the locality. The applicants claim compliance with Category 5 in terms of starting a snail farm on a 1.84Ha site they have purchased, a site which has a planning history of refusals/ withdrawals for one off housing. The proposed development will not' contribute or enhance the local community', in fact a number of existing residents form the area had objected to the principle of the development at this location. I consider the proposal does not comply with policy RH4 in this regard and the planning authority's first reason for refusal should be upheld by the Board."

24. An Bord Pleanála's decision on the first appeal reads as follows.

> "Having regard to the submissions made in connection with the application and the appeal and having regard to the pattern of development in the area with a substantial number of one off houses, and having regard to the provisions of the development plan and particularly policy RH4, the Board was not satisfied that the business plan satisfactorily met the threshold of relevant criterion under Table 4.3 of the Development Plan for the provision of a full time business which would contribute to and enhance the rural community. The proposal therefore, of itself and in the precedent it would set for other development would seriously injure the rural and residential amenity of the area and of properties in the vicinity."

25. This planning history is, of course, relevant to the question of whether or not An Bord Pleanála complied with its statutory duty to state the main reasons and considerations for its decision under section 34(10) of the PDA 2000. In particular, when applying the test of the "informed participant", one must impute to them knowledge of the prior decision of An Bord Pleanála. To put the matter more colloquially, the informed participant would know all about the first decision to refuse planning permission, and that information would be relevant to his or her interpretation and understanding of the second decision.

PLANNING AUTHORITY'S DECISION (18 AUGUST 2017)

26. The planning authority's decision regarding the second application reads as follows.

> "1. It is the policy of the County Development Plan 2017 – 2023, namely policy RH2 *'manage the development of one-off housing in conjunction with the rural housing policy zone map (Map 4.4) and the accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3.'* Based on the information submitted with the application, it is considered that the applicant has not demonstrated compliance with Local Need Criteria, as outlined in Table 4.3 (b) of the County Development Plan 2017 – 2023. The proposed development would therefore materially contravene Section 4.13 of the Kildare County Development Plan 2017 – 2023 and would therefore be contrary to the proper planning and sustainable development of the area.
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> 2. Policy RH 9 of the Planning Authority, as set out in the Kildare County Development Plan 2017 – 2023, is to ensure that, notwithstanding compliance with local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. Taken in conjunction with the level of existing development in the vicinity, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, which it is not economic to provide, and which are not planned. The development would also further exacerbate the degree of existing haphazard and piecemeal development in the area. Accordingly the development would materially contravene Policy RH 9 of the Kildare County Development Plan 2017 – 2023 and would therefore be contrary to the proper planning and sustainable development of the area.
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> 3. […]"

27. The planning authority's planner's report dealt with the issue of compliance with the local need criteria as follows (page 13).

> "In relation to updated business plan and the planning report submitted, I am still not convinced that the business being proposed falls within the category of a full-time business or one that would require the applicants to reside permanently on the site. It is seen that the business plan has updated the projected employment i.e. two no. additional employees in the first year of operation rather than the 1 no. projected under 16/598. 3 no. additional employees are forecast to be required during the second harvest season rather than the 2 no. in the business plan submitted under 16/598. However, it is noted that forecast production remains the same, with the initial goal of producing up to 10 tons of live product by year 2 stated in both business plans. Therefore, it is questionable why the requirement for staff was increased in the updated plan when the forecasted production remains the same. One can only conclude that an effort has been made to make the business appear to have a larger economic impact on the local area that would actually be the case."

THE FIRST PARTY APPEAL

28. As appears from the detailed appeal submission filed on behalf of the Applicants by their planning consultants, an attempt had been made to engage with the various reasons which had been advanced previously for refusing planning permission. In particular, the Applicants, through their planning consultants, had sought to demonstrate compliance with the "local need" requirement by setting out in detail their proposed business plan. This had been done against a background whereby An Bord Pleanála, albeit by reference to the previous version of the development plan, had refused planning permission on the basis that the Board was not satisfied that the criteria for the provision of a full-time business which would contribute to and enhance the rural community had been satisfied.

> "The Planner's report also states that the proposed heliculture business is still not deemed a full-time business. Section 34(10) of the Planning Act requires that a decision (and the notification of the decision) shall state the main reasons and considerations on which the decision is based. The Planner's report does not elaborate in any way on this point of refusal. What is deemed a fulltime business, the proposers working 30 or 40 hours per week or is it the commercial realisation of the business? With no reason being given by the Planner it is difficult to further address this point so we can only ask the Board to consider the applicant's assessment by the business is full-time.
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> The applicants will be working full-time on the farm. The necessity to be fulltime is apparent in the proposed commercial scale. If just one or two tonnes of product were proposed then perhaps it could be done part-time but with 10 tonnes in year one and then 15 tonnes of production after the second year this is a large, commercial scale, full-time venture and not only that but the business requires the hiring of 2 additional staff members in the first year, and 3 additional staff member in years 2 to 5 as per the business plan. If the business was not full-time for the proposers, how could they justify hiring additional staff? That would be financial mismanagement and this would be immediately highlighted by financial backers such as Kildare and LEADER or the applicant's bank. It could lead to the ultimate failure of the venture.

In addition to this point, experienced Irish snail farms stated in their support letters

> • Stephen De Wit of Marphan Enterprises stated '*From experience a one acre farm as proposed by Shamrock Escargot is indeed a full-time enterprise in both time and financial returns.'*
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> • Eva Milka of Gaelic Escargot also stated that '*Heliculture is a substantially scalable viable fulltime enterprise which Gaelic Escargot is testament to.'*

Mr. De Wit has indeed admitted to '*working 18 hour days or whatever is needed to get jobs done, snail farming is not 9 to 5*'. The Planner's report makes no comment on the revised and improved financials of the commercial scale heliculture business so we can only conclude that these are accepted, but yet for some other unknown reason the business is still deemed not full-time."

29. The appeal had been accompanied by a report from one of the other snail farmers which indicated the necessity for the farmers to live on site in order to address issues such as vermin.

DISCUSSION

30. The central issue in the planning appeal had been whether or not the proposed development fulfilled the development plan criteria for one-off housing. Specifically, under the Kildare County Development Plan 2017 – 2023, in order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must meet one of the local need criteria set out in Table 4.3 (a) or (b). The Applicants in the present case had sought to rely on the following criterion.

> "(iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location."

31. The Board had applied the similarly worded provision of the 2012 development plan in the context of its first decision. The Applicants had sought to address those concerns by way of the provision of *additional* information as part of their second planning application. The Board was, therefore, required to engage with and consider this additional material, and to reach a reasoned decision as to whether or not the threshold for the criterion had been met.

32. The Board's statement of its main reasons and considerations reads as follows.

> "The site in question is in an area designated as Rural Housing Policy Zone 1 within the Kildare County Development Plan 2017-2023, a zoning that is considered reasonable and consistent with the Sustainable Rural Housing - Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005 which deems the site to be in an area under strong urban influence. It is considered that the pattern of development in the area demonstrates this pressure for housing, which cumulatively is eroding the rural character of the area. Furthermore, the site is in an area characterised by very poor soil drainage characteristics, with resultant pressure on water resources (as demonstrated by the identification of this area by the Environmental Protection Agency as an area of very high risk with respect to domestic wastewater systems). The restrictive approach of the Development Plan to housing in such areas is considered reasonable. Notwithstanding the information submitted in support of the application and appeal, including the information in relation to the proposed heliculture business, the Board is not satisfied that a compelling location-dependent need for a dwelling at this location has been demonstrated. In these circumstances, it is considered that the application does not come within the scope of the Development Plan criteria for a dwelling at this location. The proposed development would, therefore, contravene the provisions of the Development Plan in relation to rural housing, and would be contrary to the proper planning and sustainable development of the area."

33. As appears, the Board's decision consists of two parts. First, the provisions of the development plan are considered, and found by the Board to be reasonable. Secondly, the Board then purports to apply those provisions to the application site. However, in this connection, the decision merely states a *conclusion*, i.e. that a compelling location-dependent need for a dwelling at this location had not been demonstrated. Leaving aside the fact that the formula used, i.e. "compelling location-dependent need for a dwelling at this location", does not accurately reflect the wording of the development plan, the decision fails to offer any rationale for this conclusion. It is simply stated in bald terms. The Applicants could not know on the basis of this decision why precisely their application had been rejected. Is it, for example, the case that An Bord Pleanála regards snail farming as an activity that can take place *other* than in rural areas? Alternatively, is it the case that An Bord Pleanála have interpreted the development plan not merely as requiring that the proposed use is intrinsically appropriate for a rural area, but that it must be specifically suitable to that site, i.e. site-specific?

34. At the hearing before me, counsel for An Bord Pleanála appeared to suggest that the latter was the correct interpretation of the development plan, and that it was necessary to demonstrate that the proposed activity is specifically suitable to that site. Counsel cited a hypothetical example of a particular breed of livestock, such as goats, which require to graze on a particular species of heather which was only available at particular sites.

35. The position is put as follows in the Board's written legal submissions at §72.

> "Indeed, at E.30 the Applicants say the Board has ignored what they say is the fact that agricultural enterprise is by its nature rural location-dependent. This, however, demonstrates the whole point and the difficulty with the Applicants' case. The starting point is that the appropriate policies are, by definition, restrictive. They restrict the scope for permission by reference to very understandable planning policy issues rehearsed in detail in the Development Plan, and, indeed, in the SRHG. It is true that agriculture depends, by and large, on a rural location. However, what is required here is to show that the *specific project requires the specific location.* If it was acceptable that *all* agriculture *necessarily* has a rural need and all heliculture was agriculture, then the particular policy here would be otiose. Any agricultural enterprise would then, by definition, demonstrate a rural need. And, since the house is said to 'follow' in this case, then the house would follow. Thus, on this view, the only matter that would be required to be shown is that an agricultural enterprise in rural Kildare was intended. This is exactly what Table 4.3(b) class iii does *not* require. Thus, in essence nothing the Applicants says establishes how the '*nature of such enterprise is location-dependent*.' Indeed, *nearly everything* submitted on the proposed enterprise shows that the exact reverse is the case and that it is very much an enterprise that can be carried out where desired. Indeed, this is echoed in RH18 which specifically speaks of location dependent

agriculture and is consistent with the SRHG and Circular SP0/08 which both speak of restrictive approaches where (as here) parties seek permission for dwelling houses on the basis of an argument about a need to carry on a business. The business itself should be location dependent. The Applicants *simply did not persuade the Board* that this was the case and thus, they could not show that any need had been proven for the dwelling."

36. The difficulty with this line of argument, of course, is that it serves to highlight the deficiencies in the Board's decision. It should not be necessary for counsel to have to elaborate upon the Board's reasoning by way of submission before the High Court. The Board's reasoning should be evident from its decision (when read in conjunction with the inspector's report).

37. If this was, indeed, the Board's interpretation of the development plan, then issues will arise as to whether, first, this interpretation is correct as a matter of law and, secondly, if it is the correct interpretation, whether it is consistent with the Department Circular issued in 2005 in order to ensure compliance with EU law.

38. It is simply not possible to determine any of these issues in circumstances where the Board's rationale is not known. This, in effect, frustrates the High Court in the exercise of its supervisory jurisdiction.

Inspector's report

39. In circumstances where the Board Direction indicates that the Board decided to refuse permission generally in accordance with the inspector's recommendation, it is legitimate to have regard to the inspector's report in seeking to identify the Board's reasoning. Unfortunately, however, the inspector's report is unilluminating in this regard. The inspector's analysis of this issue reads as follows. See §7.2.6 of the report of 19 December 2017.

> "The first party in making the case for locational justification of the proposed development has argued that the proposed development complies with rural housing need based only on ownership of the site. The historic family link to landownership in Straffan is not in my view a local link. *I consider that on the basis of the nature of the business it is not resource tied at this location and a functional need to establish the business at this location in the context of rural development policies has not been demonstrated*.* Furthermore, in terms of the requirements for one of house on basis of a full time rural dependent business as set out in Policy RH18 the landholding is significantly smaller than the requisite 5 hectares and it has not been demonstrated that the nature of the enterprise is location dependent and intrinsically linked to this rural location. I further consider that the proposed development would set and undesirable precedent for similar such development and would therefore be contrary to the proper planning and sustainable development of the area."
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> *Emphasis (italics) added.

40. As with the Board's decision, the report simply states a conclusion, without offering any rationale for same. The report fails to acknowledge—still less to explain—the fact that the inspector is relying on criteria, i.e. a requirement that the activity be resource-tied at this location, which does not appear in the development plan at all.

DECISION

41. The most authoritative statement of the legal test to be applied in assessing the adequacy of reasons in planning matters is found in the recent judgment of the in *Connelly v. An Bord Pleanála* [2018] IESC 31; [2018] 2 I.L.R.M. 453. Clarke C.J. (delivering the unanimous decision of the court) stated as follows.

> "10.1 As noted earlier, the general duty to give reasons does not involve a box ticking exercise. It will rarely be sufficient to set out, in almost standard form, a generic description of the legal test or principles by reference to which the decision is to be made, to state that that test has been applied, and simply to go on to say that a particular decision has been made. While it has often been said that a decision maker is not required to give a discursive determination along the lines of what might be expected in a superior court judgment, it is equally true that the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other.
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> 10.2 Indeed, it is worth saying that there may have been times in the past when decision makers felt that their decisions were more likely to be open to successful legal challenge if they gave detailed reasons because, it might have been considered, the giving of detailed reasons allowed parties to assert that the reasons were legally inappropriate. However, the modern position makes clear that it is more likely that a decision will be open to successful challenge because reasons are not given rather than because they are. Decision makers are normally afforded a significant margin of appreciation within the parameters of the legal framework within which a particular decision has to be taken. Courts will not second guess sustainable conclusions of fact. As noted earlier, many decisions involve the exercise of a broad judgment and here again the courts will not second guess the decision maker on whom the law has conferred the power to make the decision in question. Giving an explanation as to why the decision maker has concluded one way or the other does not affect that position. What may, however, lead to a successful challenge is if a court concludes that it is not possible either for interested parties or, indeed, the court itself, to know why the decision fell the way it did.
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> 10.3 There is a middle ground between the sort of broad discursive consideration which might be found in the judgment of a court, on the one hand, and an entirely perfunctory statement that, having regard to a series of factors taken into account, the decision goes one way or the other. There is at least an obligation on the part of decision makers to move into that middle ground, although precisely how far will depend on the nature of the questions which the decision maker had to answer before coming to a conclusion."

42. I am satisfied that An Bord Pleanála's decision in the present case—even when read in conjunction with the inspector's report—fails to meet this standard of reasoning.

43. The absence of a proper statement of the main reasons and considerations of An Bord Pleanála frustrates the High Court in the exercise of its supervisory jurisdiction by way of judicial review. In particular, it is not possible on the basis of the decision as formulated to determine whether the *other* grounds of challenge advanced, especially those to the effect that the Board misinterpreted the relevant provisions of the development plan, are well made out. The absence of a proper statement of the main reasons and considerations also makes it difficult for the Applicants to know whether there are any steps they can take, in the context of further planning application, to address the concerns which resulted in the refusal of planning permission.

PROPOSED ORDER

44. I propose to make an order setting aside the decision of An Bord Pleanála and remitting the matter to the Board for reconsideration in the light of the findings of the High Court. The objective of remittal is not that a proper statement of the main

reasons and considerations be produced on an ex post facto basis. Rather, the appeal is to be reconsidered in its entirety, and in circumstances where the analysis in the inspector's report is inadequate, the Board may wish to arrange to have a further report prepared. The fresh decision—whether to grant or refuse planning permission—should comply with the requirements of section 34(10) of the PDA 2000.