

## THE HIGH COURT

2014 No. 490JR

## IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACTS 2000–2014

BETWEEN:

MICHAEL RYAN

APPLICANT

AND

MEATH COUNTY COUNCIL

RESPONDENTS

AND

JOSEPH CONNOLLY

NOTICE PARTY

**JUDGMENT of Mr Justice Max Barrett delivered on 12<sup>th</sup> May, 2017.**

1. This is an application made under s.50A(7) of the Planning and Development Act 2000 to appeal the court's judgment of last December in *Ryan v. Meath County Council* [2016] IEHC 754. The court does not propose to repeat the relevant factual background; it is as stated in its previous judgment. Under s.50A(7) of the Act of 2000, no appeal may be brought against the court's decision, at least under that Act, unless the court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be brought.

2. In determining whether or not to grant the certificate now sought, it is nowadays usual to apply the principles identified by MacMenamin J. in *Glancre Teoranta v. Mayo County Council* [2006] IEHC 250. The court does not consider it necessary to recite those well-known principles in this judgment. Suffice it to note that the *Glancre* principles, rightly referred to by counsel for Mr Ryan as now "*well settled*" law, are the principles by reference to which the court has determined the within application, albeit that it has also had regard to various other decisions to which helpful reference was made, including *Arklow Holidays Ltd v. An Bord Pleanála* [2008] IEHC 2, *Harding v. Cork County Council* [2006] IEHC 450, *Aherne v. An Bord Pleanála* [2016] IEHC 536 and *Connolly v. An Bord Pleanála* [2016] IEHC 624.

3. The applicant has identified up to three points of law of exceptional public importance, *i.e.* points of law that are not only of public importance but of exceptional public importance, which it contends the court's previous judgment to involve, and one or all of which render it desirable, in the public interest, that an appeal be brought against the court's previous judgment. These are as follows:

[1] "*Does section 20(3)(q) of the Planning and Development Act 2000, as amended, arise when the elected members are considering material alterations which if passed would result in a change in zoning from the draft LAP?*"

[2] "*If it does arise, does section 20(3)(q) of the Planning and Development Act 2000, as amended, prohibit the elected members from rejecting a proposed material alteration which proposes a de-zoning of land from that contained in a draft LAP on the basis that if the elected members did not reject the proposed material alteration it would result in an increase in land zoned for any purpose?*", and

[3] "*Is the reference to the area of land zoned for any purpose in section 20(3)(q)(ii) of the Planning and Development Act 2000, as amended, referable to the land zoned in the preceding local area plan; the land proposed to be zoned in the draft local area plan as on display under section 20(3)(a) or to the land proposed to be zoned in the proposed alteration as published under section 20(3)(h)?*"

4. Mr Ryan disagrees, and is entitled to disagree, with the court's interpretation of s.20(3)(q)(ii) of the Act of 2000 in its judgment of last December (that being the relevant element of s.20(3)(q) for the purposes of the within proceedings). Mr Ryan has also rightly observed in his submissions that s.20(3)(q)(ii) is only engaged where there is a proposed modification to the proposed material alteration of a draft LAP. And, as Meath County Council observed in the course of the leave application (and this was not disputed by Mr Ryan), no such modification was proposed in the within case. This has the result that the observations of the court concerning s.20(3)(q)(ii) in its judgment of last December must be *obiter*. Thus no point of law for adjudication on appeal arises out of the observations of the court concerning s.20(3)(q)(ii) because the legally binding element of the court's decision (*i.e.* the *ratio*) lies elsewhere in the court's judgment, specifically in its findings as to the freedom of action retained by the elected County Council members at the meeting impugned (in error) by Mr Ryan. As to any (if any) divergence between (a) any *obiter* observations of the court in its judgment of last December as to the proper comparator to be used in the context of s.20(3)(q)(ii) and (b) any uncertainty as to which comparator was employed in *Tesco Ireland Ltd. v. Cork County Council* [2013] IEHC 493 (a case in which, as it happens, it did not matter which comparator was used), again the *obiter* nature of the court's observations in this regard yields the result, for the reasons aforesaid, that no point of law for adjudication on appeal arises out of the decision of the court in its previous judgment.

5. It does not appear to the court that any of the three points of law that it is sought to raise arise from the decision of the court. This being so, by reference in particular to the *Glancre* principles, the court therefore respectfully declines to grant the certificate now sought.