DIRECTION IN THE MATTER OF SECTION 31 OF THE PLANNING AND DEVELOPMENT ACT 2000
(AS AMENDED BY S.21 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010)

SOUTH CLARE LOCAL AREA PLAN 2012-2018 DIRECTION 2012

“Local Area Plan” means the South Clare Local Area Plan 2012 – 2018.

“The Lands” means the lands currently indicated as “R5” (residential) in plan/map which sets out the objectives for the village of Quin (Appendix 1 to this direction)

The Zoning Objective means the zoning objective “R5” (residential) in plan/map which sets out the objectives for the village of Quin (Appendix 1 to this direction)

“The Planning Authority” means Clare County Council.

WHEREAS the functions of the Minister for the Environment, Community and Local Government under the Planning and Development Acts 2000 to 2012, other than Chapter 1 of Part VI of the Planning and Development Act 2000, have been delegated to the Minister of State at the Department of the Environment, Community and Local Government pursuant to the Environment, Community and Local Government (Delegation of Ministerial Functions) Order 2012 (S.I. 148 of 2012).

WHEREAS the Minister of State at the Department of the Environment, Community and Local Government is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that

(i) Clare County Council in making the South Clare Local Area Plan 2012 – 2018 has ignored or has not taken sufficient account of the submissions made by the Minister for the Environment, Community and Local Government in April 2012,

and

(ii) the South Clare Local Area Plan 2012 – 2018 is not in compliance with the requirements of ss.19, 20 and 177V of the Planning and Development Act 2000 (as amended).

In forming the said opinion, the Minister of State has considered the report and recommendation of the Manager of the Planning Authority dated August 2012, and the written submissions made by Donna Mullen, Brian McCarthy Contractors Ltd., and by Sonny Scanlon M.C.C. on behalf of 22 elected members of Clare County Council.
Having considered the said report and recommendation and written submissions, the Minister of State has decided (i) that no material amendment to the draft direction of July 2012 is required, and (ii) that further investigation is not necessary in order to clarify any aspect of the report or submissions.

NOW, THEREFORE in exercise of the powers conferred on her by s.31 of the Planning and Development Act 2000 (as amended), the Minister of State at the Department of the Environment, Community and Local Government hereby directs as follows:

(1) This Direction may be cited as the Planning and Development (South Clare Local Area Plan 2012-2018) Direction 2012.

(2) The County Council of Clare is hereby directed to take the following steps with regard to the South Clare Local Area Plan 2012-2018 (“the Local Area Plan”).

(i) The plan/map which sets out the objectives for the village of Quin is to be amended by changing the zoning objective for lands currently indicated as “R5” (residential) to “OS4” (open space) and agriculture. For ease of reference a copy of the said plan/map indicating “R5” is attached as Appendix 1 to this direction. The effect of this amendment will be that the zoning objective for the lands will revert to the zoning objective as per the plan/map included in the Draft South Clare Local Area Plan 2012-2018 published in September 2011. For ease of reference a copy of this plan/map indicating “OS4” and agriculture is attached as Appendix 2 to this direction.

(ii) The written statement in respect of the village of Quin is to be amended by reverting to the following text in the draft South Clare Local Area Plan 2012–2018 for the zoning objective “OS4”.

**OS4 – Feaghquin**

This site has been zoned as open space taking account of its location proximate to Poultnagordon Cave SAC. This cave is of international importance and is designated for the Annex II species, Lesser Horseshoe Bat and the Annex I habitat - Caves not open to the public (natural limestone cave – phreatic rift maze formation). The cave is used by hibernating lesser horseshoe bats, with numbers averaging 85 with a previous peak count of 116 in 2009 (internationally important numbers). The northern part of OS4 is crisscrossed by hedgerows - hedgerows function as important commuting routes for bats to and from the cave. Bats are particularly sensitive to human disturbance, light pollution (e.g. from housing developments) and habitat fragmentation.

The purpose of this zoning is to protect the cave from developments likely to result in habitat fragmentation or loss (i.e. loss of hedgerows), light pollution and human disturbance. The site is currently used for agricultural purposes, i.e. grazing livestock, and the continuation of this activity is deemed as the best course of action to protect the SAC and its bat population.
STATEMENT OF REASONS

1. A written submission on the proposed material alterations to the draft Local Area Plan was made to Clare County Council on behalf of the Minister for the Environment, Community and Local Government in April 2012. This written submission drew attention \textit{inter alia} to the fact that the Planning Authority’s own Habitats Directive screening report (advised in the report of the Manager of the Planning Authority dated August 2012 as a full Habitats Directive Assessment) indicated that the proposed zoning objective for the Lands will have a negative impact on Natura 2000 sites. The written submission on behalf of the Minister recommended that the zoning objective revert to that of the draft local area plan.

The Planning Authority has ignored, or has not taken sufficient account of the said written submission, in that the Planning Authority proceeded to adopt the impugned zoning objective. In so doing, the elected members relied on an improper consideration, namely, a report by Conor Kelleher dated June 2012, which was not subject to the public consultation procedure prescribed under s.20 of the Planning and Development Act 2000 (as amended), in preference to the written submissions on behalf of the Minister.

2. The zoning objective “R5” (Quin) set out in the Local Area Plan is inconsistent with the provisions of the Clare County Development Plan. The Core Strategy of the Clare County Development Plan 2011-2017 sets out, \textit{inter alia}, that objective CDP17.18 requires, where appropriate, that all plans and projects comply with the requirements of the Habitats Directive. The zoning objective is therefore not compliant with s.19 of the Planning and Development Act 2000 (as amended).

3. The Local Area Plan includes a zoning objective for the Lands which would allow for a use, namely residential use, which would adversely affect the integrity of a European site. This does not comply with the provisions of s.177V of the Planning and Development Act 2000 (as amended) and is in breach of the requirements of Article 6 of the EU Habitats Directive.

4. The effect of the zoning objective is to defer the carrying out of an appropriate assessment in respect of the Lands until the stage of an application for planning permission. This is not compliant with the requirements of Part XAB of the Planning and Development Act 2000 (as amended) and not compliant with Article 6 of the EU Habitats Directive as interpreted in Case C-418/04 Commission v. Ireland.

5. In the alternative, the Local Area Plan includes a zoning objective for the Lands which would allow for a use, namely residential use, in circumstances where it is not
certain ("no reasonable scientific doubt") that such a use will not adversely affect the integrity of the European site. This does not comply with the provisions of s.177V of the Planning and Development Act 2000 (as amended) and is in breach of the requirements of Article 6 of the EU Habitats Directive.

6. The Local Area Plan does not set out any reason for the zoning objective of the Lands. This does not comply with the provisions of s.20 of the Planning and Development Act 2000 (as amended), or with the provisions of s.177V of the Planning and Development Act 2000 (as amended).

7. The decision to zone the Lands for residential use was informed by an improper consideration, namely a report by Conor Kelleher dated June 2012, which was not subject to the public consultation procedure prescribed under s.20 of the Planning and Development Act 2000 (as amended).

8. The decision to zone the Lands for residential use was made in breach of the requirement of s.20 and s.177V of the Planning and Development Act 2000 (as amended). In particular, the decision was made in the absence of a determination that the Local Area Plan, as amended, shall not adversely affect the integrity of a European site. The Habitats Directive Assessment carried on behalf of the Planning Authority indicated that the Lands should not be subject to a zoning objective for residential use.

GIVEN under my hand,

[Signature]

Minister of State

at the Department Environment, Community and Local Government

this 5 day of September 2012.
Appendix 1 - Quin Map: Manager's Report to Elected Members on submissions received on the Proposed Material Alterations to the Draft South Clare Local Area Plan 2012-2018 dated 4th May 2012
Appendix 2 - Quin Map: Draft South Clare Local Area Plan 2012-2018 (September 2011) - Volume I Draft Written Statement and Maps
Section 31 of the Planning and Development Act 2000 (as amended by the Planning and Development (Amendment) Act 2010)  
Decision to issue Direction relating to the South Clare Local Area Plan 2012-2018

Dear Manager,

I am writing to you in connection with the draft Ministerial Direction of July, 2012. I have now considered the report and recommendation prepared by you pursuant to s.31 of the Planning and Development Act 2000 (as amended in 2010). I have also considered the written submissions and observations received on the notice of intent to issue a Ministerial Direction in relation to the South Clare Local Area Plan 2012-2018.

Having considered the said report and recommendation, and the written submissions, I have decided (i) that no material amendment to the draft Direction of July 2012 is required, and (ii) that further investigation is not necessary in order to clarify any aspect of the report or submissions.

TAKE NOTICE that on 5th day of September, 2012 I have issued a Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended). A copy of this Direction is attached to this letter.

MEASURES UNDER THE DIRECTION

The R5 zoning objective for the lands at Quin as set out in the Quin Map from the Manager’s Report to Elected Members on submissions received on the proposed Material Alterations to the Draft Local Area Plan (Appendix 1 to the Direction) shall be changed from residential use to open space and agricultural use as set out in the Quin Map from the Draft South Clare Local Area Plan 2012-2018 (September 2011) - Volume 1 Draft Written Statement and Maps (Appendix 2 to the Direction) and the written objectives as provided for at page 77 (relating to OS4 – Feaghquin) of the Written Statement (as set out below, and attached to the proposed Direction).
PARTS OF THE LOCAL AREA PLAN AFFECTED
The direction affects the following provisions of the Local Area Plan by the application to these lands of the written objectives on page 77 (relating to OS4 – Feaghquin) Volume 1 Draft Written Statement as follows:

OS4 – Feaghquin
This site has been zoned as open space taking account of its location proximate to Poulnagordon Cave SAC. This cave is of international importance and is designated for the Annex II species, Lesser Horseshoe Bat and the Annex I habitat - Caves not open to the public (natural limestone cave – phreatic rift maze formation). The cave is used by hibernating lesser horseshoe bats, with numbers averaging 85 with a previous peak count of 116 in 2009 (internationally important numbers). The northern part of OS4 is crisscrossed by hedgerows – hedgerows function as important commuting routes for bats to and from the cave. Bats are particularly sensitive to human disturbance, light pollution (e.g. from housing developments) and habitat fragmentation.

The purpose of this zoning is to protect the cave from developments likely to result in habitat fragmentation or loss (i.e. loss of hedgerows), light pollution and human disturbance. The site is currently used for agricultural purposes, i.e. grazing livestock, and the continuation of this activity is deemed as the best course of action to protect the SAC and its bat population.

STEPS TO BE TAKEN
The Planning Authority is required, pursuant to Section 31(2) of the Planning and Development Act, 2000 (as amended) to comply with this Direction. The Local Area Plan must therefore be altered as indicated above, and the Planning Authority should ensure that copies of the Local Area Plan as altered are available for inspection as its offices and on its website. The Planning Authority should also publish notice of the making of the Direction and alteration of the Local Area Plan, and post a copy of such notice on its website.

My officials remain available to assist the Council, as necessary.

Yours sincerely,

Jan O’Sullivan, T.D.,
Minister for Housing and Planning,
Department of the Environment, Community and Local Government.

Copied to:

Mr. Tom Coughlan, County Manager, Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare.

Cathaoirleach, Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare.

Mid-West Regional Authority, Mid Friar Court, Abbey Street, Nenagh, Co. Tipperary.