

An  
Bord  
Pleanála

Board Order  
ABP-307745-20

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**Planning and Development Acts 2000 to 2021**

**Planning Authority: Westmeath County Council**

**Application for Leave To Apply For Substitute Consent**, by Klasmann Deilmann Ireland Limited care of Tobin Consulting Engineers of Block 10-4, Blanchardstown Corporate Park, Dublin.

**Development:** Peat harvesting at Ballygarvey Bog, Townlands of Ballygarvey, Carrigagh, Curristeen and Bardenstown, County Westmeath.

### **Decision**

**GRANT** leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

## Reasons and Considerations


Having regard to section 177D of the Planning and Development Act, 2000, as amended, the Board considered that an Environment Impact Assessment is required in respect of the development concerned. Furthermore, having regard to Section 177D(2) of the Act, the Board considers that the following exceptional circumstances are relevant to this particular application:

- (a) the regularisation of the development concerned would not circumvent the purposes and objectives of the Environment Impact Assessment Directive,
- (b) the applicant had, or could reasonably have had, a belief that the development was authorised,
- (c) the ability to carry out an assessment of the environmental impacts of the development for the purpose of an Environment Impact Assessment, and provide public participation in such assessments, has not been substantially impaired,
- (d) the actual or likely significant effects on the environment resulting from the carrying out or continuation of the development would be capable of assessment, and
- (e) the satisfactory extent to which significant effects on the environment can be remediated.

Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.

In deciding not to accept the Inspector's recommendation to refuse leave to apply for substitute consent, the Board had regard to the submissions of the applicant, noted the lack of any ongoing enforcement procedures, concurred with the observations of the planning authority and concluded that:

- (i) the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive,
- (ii) the applicant could reasonably have had a belief that the development was authorised,
- (iii) the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired, and
- (iv) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, resulting from the carrying out of the development, could be substantially remediated.

  
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**Michelle Fagan**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

Dated this 18<sup>th</sup> day of May 2022.

