



An
Bord
Pleanála

Inspector's Report ABP-305340-19

Question

Whether the drainage of wetland habitat & mechanical disturbance, extrusion of peat & removal of turf from a site is or is not development or is or is not exempted development.

Location

Drakerath, Wilkinstown, Co.Meath

Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

KAS51942

Applicant for Declaration

Patrick Moran

Planning Authority Decision

No declaration

Referral

Referred by

Patrick Moran

Owner/ Occupier

Not stated

Date of Site Inspection

13 November 2019

Inspector

Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located in Co Meath, north east of Kells, north west of Slane, east of Moynalty and south of Nobber. The nearest settlement is Carlandstown which is c 5km to the west. The address is given as Drakerath, Wilkinstown, Co Meath. The site as identified on map is comprised of several townlands: Castletownmoor, St John's Rath, Drakerath, Mountainstown, Dowdstown, Fletcherstown, Clongill, Oristown, Rossmeen, Emlagh and Gravelstown, as there is a convergence of townlands at the high point on this site, within the high bog south of the road. The site is also divided by a Union & Rural District Boundary (Kilshine & Emlagh RDs). Part of the site is located within the Gibbstown / Baile Ghib gaeltacht area.
- 1.1.2. A local road, the L74113, which runs east west between Wilkinstown and Carlanstown, separates the two portions of the site outlined on the map submitted. Another local road runs north south along the western boundary. The crossroads formed by these roads is surrounded by bogland in various states. The identified area is to the east of the crossroads and comprises areas of fairly intact bog and areas where extraction of peat has and / or is ongoing.

2.0 The Question

- 2.1.1. The question presented is: whether the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & extraction of turf is or is not development and is or is not exempted development.

Patrick Moran, in requesting the declaration, has provided a map and aerial photograph which he states illustrate potential unauthorised development, including drainage of a wetland habitat (total area 88ha approximately) where in excess of 2ha of wetland habitat is being affected (cf 1(c) Part (2) schedule 5 of the Planning and Development Regulations (as amended) 2001). This is a wetland site of high biodiversity value that is being drained and from which peat is being extracted by persons unknown. This development and similar developments nationwide are contributing to the climate and biodiversity emergency declared by the government. This activity is having a significant impact on the environment. Even if considered sub-threshold, the impact on the environment of the development should require at

minimum EIA screening in accordance with the planning and development regulations (as amended) 2001.

Much of the site is owned by Coillte.

2.2. Declaration

- 2.2.1. The planning authority did not issue a declaration and advised the questioner to refer the question to the Board.

2.3. Planning Authority Reports

- 2.3.1. Planning Report:

There is no planning report on the file.

Notification of failure to issue a declaration was sent to Coillte as well as to the referrer.

3.0 Planning History

No planning history is given for the site.

Adjoining lands:

PA0038, North Meath Wind Farm Limited, Emlagh Wind Farm - consisting of up to 46 No. Turbines in three clusters, a 110kV Electricity Substation and associated works; refused for one reason including that the scale, extent and height proposed would visually dominate this populated rural area, would seriously injure the amenities of property in the vicinity, would interfere with the character of the landscape and would not align with the Wind Energy Development Guidelines, as this guidance document did not envisage the construction of such extensive large scale turbines in an area primarily characterised as a hilly and flat farmland landscape and in such proximity to high concentrations of dwellings.

PA0046 North Meath Wind Farm Limited Castletownmoor Wind Farm consisting of up to 25 no. turbines, a 110kV electricity substation and associated works; refused for a similar reason. The inspectors report included:

The wind farm site is centred on Emlagh bog, but it does not appear to encompass any part of the active raised bog, but rather includes drainage, degraded, afforested or natural woodland regeneration areas around the periphery... (the bog) supports EU Annex I Habitat (Degraded Raised Bog).

4.0 Policy Context

4.1. Development Plan

4.1.1. Meath County Development Plan 2013-2019 is the operative plan. The Development Plan review which commenced in 2017 was paused in accordance with the provisions of the Planning and Development (Amendment) Act 2018 pending the National Planning Framework (N.P.F.) and the requirement to develop and adopt a Regional Spatial & Economic Strategy (R.S.E.S.). Following the adoption of the RSES by the Eastern & Midland Regional Assembly on Friday 3rd May, 2019, Meath County Council recommenced the review of the Draft Meath County Development Plan.

Relevant provisions include:

Core Principle 11 To integrate climate change considerations into the policies and objectives of Meath County Council and its key stakeholders.

EC POL 4 To support the National Climate Change Strategy and, in general, to facilitate measures which seek to reduce emissions of greenhouse gases.

County Meath Biodiversity Action Plan

Meath County Council adopted its first Biodiversity Action Plan in April 2010 in accordance with the first National Biodiversity Plan. The plan provides a framework for the conservation of biodiversity and natural heritage at a local level.

A number of actions are set out under four strategic themes of-

- (i) Awareness and Education;
- (ii) Baseline data and information;
- (iii) Best practice in Heritage Conservation and Management, and;
- (iv) Integrating biodiversity into the role of the Local Authority.

Implementation of the plan is ongoing and co-ordinated by the Heritage Officer in partnership with the County Meath Heritage Forum.

It is the policy of Meath County Council:

(NH POL 1) To protect, conserve, and seek to enhance the County's biodiversity.

(NH POL 2) To promote measures to protect biodiversity in the development management process by creating and improving habitats, where possible.

(NH POL 3) To raise public awareness and understanding of the county's natural heritage and biodiversity.

(NH POL 4) To promote increased public participation in biodiversity conservation by supporting and encouraging community-led initiatives.

It is an objective of Meath County Council:

(OBJ 1) To implement the objectives and actions of Actions for Biodiversity 2011-2016; Ireland's National Biodiversity Plan.

9.7.6 Peatlands - County Meath represents the eastern limit of raised bogs in Ireland and Meath County Council recognises the potential for utilisation of protected areas for tourist, amenity, educational and research purposes. The Council will liaise with the various government and non-government organisations involved in an effort to secure the conservation of the peatland areas.

It is an objective of Meath County Council: (NH OBJ 4) to work in partnership with relevant stakeholders on a suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment Screening as appropriate.

4.2. **Meath and the Local Biodiversity Action Plan (LBAP)**

The main function of the Meath Biodiversity Action Plan is to provide a framework and series of actions to conserve, enhance and raise awareness of Meath's rich biodiversity and to maximise the contribution that it makes to the social, economic and environmental well being of the county, taking into account local, national and international, including European priorities. Further to the publication of a first Meath Biodiversity Action Plan (2008-2012), a new National Biodiversity Plan

2011-2016 has been published which sets out the requirement for a review of the Local Biodiversity Action Plan.

It is an objective (NH OBJ 1) of the Meath County Development Plan 2013-2019 to: Implement, in partnership with the Department of Arts, Heritage and the Gaeltacht, relevant stakeholders and the community, the objectives and actions of Actions for Biodiversity 2011-2016; Ireland's National Biodiversity Plan that relate to the remit and functions of Meath County Council and the County Meath Biodiversity Plan and any revisions thereof.

The first Meath Biodiversity Action Plan covered the period 2008-2012. The vision for the second Biodiversity Action Plan for Meath is to consolidate the framework for addressing threats so that habitats and species can be conserved. The Plan will continue doing this through raising awareness of the value of biodiversity as well as gathering important information on the ecology of species and habitats, which is essential for their protection and conservation.

The principle functions of a biodiversity action plan are:

- To translate national and international policies and legislation into action on the ground.
- To conserve biodiversity of national and local importance.
- To provide a framework for the conservation of biodiversity and to coordinate existing and new initiatives.
- To assist sustainable planning and development.
- To raise public awareness of and involvement in the conservation of biodiversity.
- To collect and collate information on the biodiversity of an area.
- To provide a basis for monitoring the success of conservation of biodiversity at a local, regional and national level.

4.3. **National Peatlands Strategy**

- 4.3.1. The National Peatlands Strategy was published by the Department of Culture Heritage and the Gaeltacht, and includes:

- Peatlands provide a range of ecosystem services and are considered amongst the most important ecosystems of the world, because of their key value for biodiversity, regulation of climate, water filtration and supply, and important support for human welfare (e.g. source of wellbeing and knowledge). In addition, peatlands form unique landscapes which can act as amenity areas for locals and visitors and can attract tourists (hill-walking, wildlife watching and fishing in remote areas are major recreational activities in Ireland) which bring economic benefit. In recent years, along with increased understanding and concern over climate change, scientific research has established the importance of peatlands as carbon stores and potential buttresses against some of the projected effects of climate change. As they develop, peatlands slowly remove carbon from the atmosphere and store it in the form of peat. By taking the carbon dioxide from the atmosphere over long periods and by emitting other greenhouse gases such as methane, natural bogs affect and regulate the global climate. Over a long period of time, peatlands have been naturally 'cooling' the atmosphere, the opposite to human-induced 'warming' caused by the emission of carbon dioxide into the atmosphere. Like virgin tropical rainforest, natural peatlands act as natural climate regulators. Once degraded, through drainage, cutting or burning, this process is reversed. Along with the emissions of carbon dioxide from the burning of peat, the drained bogs now also emit vast amounts of carbon dioxide as the peat that they stored decomposes. Peatlands play an important part in maintaining water quality. Mosses, which are the main vegetation component of a healthy peatland help to filter contaminants and release 'clean' water. Damage to peatlands, especially where channels have been created from cutting, drainage and loss of vegetation can increase the amount and speed of unfiltered water leaving the bog. Peatlands can also be important in regulating flows into water courses and can mitigate flooding and drought. When peatlands are damaged or inappropriately managed, these services can be degraded or lost entirely, resulting in additional costs arising from flooding of properties and land, damage to rivers and lakes, losses of fish spawning and nursery grounds, increased cost of water treatment and increased emissions of carbon dioxide to the atmosphere. The role of healthy peatlands in the provision of clean water, in regulating climate and providing support for unique biodiversity and associated aesthetic and touristic values is not widely appreciated against the

production values of a drained peatland in the form of peat, turf or support for agriculture and forestry. An understanding of these peatlands ecosystem services is key to sound decision making regarding the management and use of peatlands, which will centre on balancing the needs and interests of the entire community.

- C392/96, in 1999, the Court found that Ireland had incorrectly applied the requirements of the EIA directive in regard to turf-extraction, land reclamation for agricultural purposes and afforestation. Resolution of this case included amendments of planning law and designation of peatland Natural Heritage Areas.
- C67/99, in 2001, the Court found that Ireland had not nominated a sufficient list of sites for designation as SACs. This finding necessitated the nomination of additional sites, including peatlands sites.
- C-117/00, in 2002, the court found that Ireland had not provided sufficient protection to specific bird habitats from overgrazing by sheep in upland areas and in sites designated under the Birds Directive.
- C215-06, in 2008, the Court found that Ireland failed to subject a planning application to Environmental Impact Assessment in the case of a windfarm at Derrybrien.
- C66-06, in 2008 the Court found that Ireland was not correctly applying the requirements of the EIA Directive. This resulted in amendments to planning and agriculture legislation, including aspects related to the drainage of wetlands.

Further pre-court infringement action is currently underway related to turf-extraction from SACs and NHAs.

4.4. Natural Heritage Designations

- 4.4.1. The nearest Natura sites are River Boyne and River Blackwater cSAC, Site Code 002299, and River Boyne and River Blackwater SPA, Site Code 004232, which are c 4 km, straight line distance, from the subject site.

5.0 The Referral

5.1. Referrer's Case

- 5.1.1. The questioner, (Dr Patrick Moran, principal ecologist with FERS Ltd, environmental consultancy), presents the following information:
- 5.1.2. Raised bog is a wetland habitat (a reference is given with this statement to a publication in relation to rewetting degraded peatlands restoration, optimising biodiversity and carbon sequestration),
- 5.1.3. Approximately 84% of Ireland's raised bog habitat has been affected by peat extraction, having implications for both climate and biodiversity (a reference is given with this statement to a publication in relation to rewetting degraded peatlands for climate and biodiversity benefits).
- 5.1.4. The site in question comprises approximately 88ha, in total including areas of cutaway, wetland and high biodiversity value, and a regionally important carbon sink, that is being drained. The drain network discharges to the River Blackwater, a component of the River Boyne and River Blackwater Special Area of Conservation. The peat is being extracted by persons unknown. This development and similar developments nationwide are contributing to the climate and biodiversity emergency declared by the government. The development includes drainage of a wetland habitat (total area 88ha. approx.) where in excess of 2ha. of wetland habitat is being affected (cf 1 (c) part (2) schedule 5 of the Planning and Development Regulations (as amended) 2001). This activity is having a significant impact on the environment.
- 5.1.5. Even if considered sub-threshold, the impact on the environment of the development should require at minimum EIA screening in accordance with the planning and development regulations (as amended) 2001. The discharge of drains to the River Blackwater should, at minimum require Appropriate Assessment screening.
- 5.1.6. Given the recent declaration of a 'Climate and Biodiversity Emergency' and threats by An Taoiseach that Ireland will vote against the controversial Mercosur trade agreement unless Brazil takes steps to protect the Amazon and the recent

publication in Nature (a reference is given with this statement to a publication in relation to climate change both increasing and decreasing European river floods), that has illustrated that the upward change in mean annual flood discharge per decade (%) in Ireland during the period 1960 – 2010 has been driven by increasing rainfall and soil moisture; the questioner urges An Bord Pleanála to comprehensively assess if the development at Drakestown is exempted development in view of 1 (c) part (2) schedule 5 of the Planning and Development Regulations (as amended) 2001.

5.1.7. Attached to the referral is the form submitted to Meath Co Co which includes:

This is a wetland site of high biodiversity value that is being drained and from which peat is being extracted by persons unknown. This development and similar developments nationwide are contributing to the climate and biodiversity emergency declared by the government. This activity is having a significant impact on the environment. Even if considered sub-threshold, the impact on the environment of the development should require at a minimum EIAR screening in accordance with the Planning and Development Regulations (as amended) 2001. Much of the site is owned by Coillte.

5.2. **Planning Authority Response**

5.2.1. The Planning Authority has not responded to the referral.

5.3. **Owner/ occupier's response**

- The owners/ occupiers were not notified of the question and have not been notified of the referral.
- The questioner states that much of the site is owned by Coillte.
- The questioner also refers to turbary and therefore it appears likely that there are turbary rights associated with some of the land.
- In the absence of details re. ownership, notification of owners/ occupiers is not possible.
- Section 5 of the Planning and Development Act does not require such notification.

6.0 Statutory Provisions

6.1. Habitats Directive

- 6.1.1. The European Union Council Directive 92/43/EEC of 21 May 1992, as amended, on the conservation of natural habitats and of wild fauna and flora, sets out to conserve habitats and species;

There are six annexes to the Directive. Annex I to the directive lists types of natural habitats of community interest whose conservation requires the designation of special areas of conservation.

The Directive establishes criteria for selecting sites eligible for identification as sites of community importance and designation as special areas of conservation.

Assessment at national level of the relative importance of sites for each natural habitat type in Annex I and each species in Annex II (including priority natural habitat types and priority species) is set out in Annex III.

Annex I includes the habitat types:

7110 *Active raised bogs (priority habitat).

7120 Degraded raised bogs still capable of natural regeneration.

From the habitat types listed in Annex I member states propose sites as Sites of Community Interest; the Community determines if they are Sites of Community Interest; and the process of making SACs continues in the member state.

- 6.1.2. Interpretation Manual of European Union Habitats Eur 28 April 2013 European Commission:

Under the heading: Raised Bogs and Mires and Fens Sphagnum Acid Bogs, the following are listed:

7110 * Active raised bogs

Note 4) - In order to support the conservation of this ecosystem over its geographic range and its genetic diversity, marginal areas of lower quality as a result of

damage or degradation which abut active raised bogs may need to be included, protected and, where practicable, regenerated. There are very few intact or near-intact raised bogs in Europe, except in Finland and Sweden where active raised bogs are the predominant mire complex type in hemiboreal and southern boreal regions.

7120 Degraded raised bogs still capable of natural regeneration

Note 1) These are raised bogs where there has been disruption (usually anthropogenic) to the natural hydrology of the peat body, leading to surface desiccation and/or species change or loss. Vegetation on these sites usually contains species typical of active raised bog as the main component, but the relative abundance of individual species is different. Sites judged to be still capable of natural regeneration will include those areas where the hydrology can be repaired and where, with appropriate rehabilitation management, there is a reasonable expectation of re-establishing vegetation with peat-forming capability within 30 years. Sites unlikely to qualify as SACs are those that consist largely of bare peat, that are dominated by agricultural grasses or other crops, or where components of bog vegetation have been eradicated by closed canopy woodlands.

6.2. **Planning and Development Act, 2000, as amended**

6.2.1. Section 2 (1) of the 2000 Planning and Development Act states:

In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...

In Section 2 (1) of the Act ‘works’ are interpreted as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure’.

6.2.2. Section 3 (1) of the 2000 Planning and Development Act states:

In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

6.2.3. Section 4 (1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development, where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

Section 4 (4) of the Planning and Development Act states as follows:

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required, (enacted 20 Sept 2012).

6.3. Planning and Development Regulations, 2001 as amended

6.3.1. Article 6(1) states:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

6.3.2. Article 9(1) provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act, including:

- (1) (a) if the carrying out of such development would—
 - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to

appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

6.3.3. Schedule 2 Part 3 sets out classes of rural development which are exempted, including:

Land Reclamation

CLASS 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

Peat extraction

CLASS 17

- (a) Peat extraction in a new or extended area of less than 10 hectares, or
- (b) Peat extraction in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into force of these Regulations¹.

1. No such peat extraction shall be likely to have significant effects on the environment by reference to the criteria set out in Schedule 7.
2. Paragraph 1 shall not apply to peat extraction
 - (i) on a European site where such development is regulated by the European Communities (Natural Habitats) Regulations 1997, or any Regulations or enactment amending or replacing those Regulations, or
 - (ii) on a site prescribed under article 12 where such development is regulated by the Wildlife (Amendment) Acts 1976 and 2000, or any enactment amending or replacing those Acts

¹ 14th day of July 2005

Schedule 5 sets out development for the purposes of part 10 (Article 93) (i.e. requiring EIA)

Part 2

1. Agriculture, Silviculture and Aquaculture

(c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.

2. Extractive Industry

(a) Peat extraction which would involve a new or extended area of 30 hectares.

Schedule 7 sets out criteria for determining whether development listed in part 2 of schedule 5 should be subject to an environmental impact assessment, (i.e. sub-threshold requiring EIA).

1. Characteristics of proposed development

The characteristics of proposed development, in particular—

(b) cumulation with other existing development...

2. Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground,

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

(i) wetlands, riparian areas, river mouths;

6.4. Other

Referrals database

301243 whether the cutting of small amounts of turf using a sleen within Mouds Bog, candidate Special Area of Conservation to demonstrate how turf is cut by hand to members of the public is or is not development or is or is not exempted

development. The Board determined that it is development and is not exempted development.

RL2297 whether the extraction of peat in an area of 38 hectares, out of a total area of 66.33 hectares of undesignated bog at Kilballyskea Bog, Co Offaly, where drainage works had previously taken place is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development.

RF.1078 whether works at Killamuck Bog, Abbeyliex, Co. Laois are or are not development and are or are not exempted development. The Board determined that having regard to the prolonged period of time that had elapsed since the carrying out of drainage works on the land without the commencement of any associated harvesting of peat, it is development and is not exempted development, (other issues included the use of an access to the national primary road and enclosure of land habitually open to the public).

RL2975 Whether the drainage of boglands, peat extraction, accesses from public roads, peat handling activities and other associated activities and works are or are not development or are or are not exempted development.

The Board decided that the works were exempted development until the 20th day of September 2012, and would thereafter not be exempted development, as follows:

- The extraction of peat and associated works (excluding peat handling) involved the carrying out of works on land in an intensive and sustained manner and that the commencement of such works involved a material change in the use of land even if peat extraction had occurred in an occasional and less intensive manner before then.
- Both the carrying out of the works on the sites and the material change of use to which their commencement gave rise, constituted development per S. 3 of the 1963 & 2000 Acts.
- The material change of the use and the works were exempted per S.4(1)(a) of the 1963 Act, (“use of land for turbarry” was agriculture).

- The ongoing development and continuation of works remained exempted development after the coming into force of the 2000 Act, by virtue of article 11 of PDR, 2001.
- Having regard to the criteria set out in Schedule 7 of the 2001 Regulations, the Board concluded that an EIA would be required.
- In relation to the Natura 2000 sites, the Board concluded that the development would be likely to have a significant effect on the said Natura 2000 site and so required AA.
- Because an EIA and AA were required then, notwithstanding article 11, any such works on or after the 20th day of September, 2012, were not exempted development by virtue of Section 4(4) of PDA, 2000, as inserted by S. 17 of the Environment (Miscellaneous Provisions) Act, 2011.

RL2969, whether the drainage of boglands, peat extraction, accesses from public roads, peat handling activities and other associated activities and works at Camagh Bog, Doon, Castlepollard, County Westmeath are or are not development or are or are not exempted Development

The referral related to a 1km² area of land undergoing commercial peat extraction. A number of Natura 2000 sites lay within 10km of the bog. The PA stated that the ordinarily exempt activity of peat extraction was not exempt in this instance due to the likelihood of environmental impacts. The issue of the date of commencement of peat extraction and the implications of this vis a vis the pertinent legislation was a key issue. The reference was made by the Planning Authority.

The Board decided that the extraction of peat and associated works was development and not exempted development as follows:

- The works were intensive and sustained, and their commencement involved a material change in the use of land even if peat extraction had occurred in an occasional and less intensive manner before then. Therefore, the works and the material change of use constituted development. This was exempted development per S.4(1)(a) of the 1963 Act, because “use of land for turbary” was included in the definition of agriculture in Section 2 of that Act, and remained exempted development subsequent to the 2000 Act, despite the omission of the reference to turbary in section 2 of the Act, by virtue of article 11 of the 2001 Regulations.

- The development would require an EIS, and given the site's location upstream of the SPA, the works would be likely to have a significant effect on the said Natura 2000 site and so required AA. Accordingly, the development was not exempted per S. 4(4) of the PDA, 2000, as inserted by S.17 of the Environment (Miscellaneous Provisions) Act, 2011.

7.0 Assessment

- 7.1.1. The identified site is a bog and is therefore a wetland area and, in addition to its biodiversity value, the peat within the site is important for carbon sequestration. These issues are identified by the referrer and are reflected in government policy and EU directives and decisions to an increasing extent.
- 7.1.2. The area was subject to peat extraction at a limited rate for hundreds of years, but the extraction methods and the rate of extraction has changed very considerably in the past few decades. Traditional extraction involved labour intensive working of small turf bank faces, and only where sufficient drainage had been achieved using hand tools; which limited the rate at which the bog could be worked.
- 7.1.3. The drainage and peat extraction is now a commercial operation, utilizing large specialized machinery for peat extrusion and for laying it out in rows on a nearby surface; and utilizing large specialized machinery with the ability to dig large drains, even on soft ground which accelerates drainage. This mechanisation of the drainage and extraction processes allows greatly intensified extraction of peat.
- 7.1.4. By comparing the aerial photography available from the Ordnance Survey at osi.ie it can be seen that a considerable extent of bog was developed between the years for which this information is available; from 1995 to post 2013. The commercial nature of the current operations can be seen on google map satellite view, where extensive rows of turf can be seen laid out on the ground; on one plot 4 vehicles can be seen carrying out the operation.
- 7.1.5. The similarity of pattern in all the extraction sites shown in the aerial photography suggests a single operator.

7.2. Is or is not development

- 7.2.1. The definition of development in Section 3 (1) of the 2000 Planning and Development Act covers the extraction of peat and the Board has previously determined that peat extraction is development.

7.3. Is or is not exempted development

Exemption provisions (schedule 2) in the 2001 Regulations (as amended) include under Exempted Development – Rural, Class 11 - Land Reclamation ²

Development consisting of the carrying out of drainage and/or reclamation of wetlands

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

- 7.3.1. This development type is referenced to by the referrer, in his reference to drainage of wetland, in schedule 5. (i.e. requiring EIA). It seems to me that the intention with regard to the such development is to reclaim land. It could be the intention in this case to reclaim the land and land reclamation would be an indirect outcome of the development. However, it appears to me that peat extraction is the objective of the drainage works. Since a different class of development occurs under the heading 'exempted development rural', which is a development class more directly applicable, and since land reclamation is not the direct purpose of the development, I am inclined to the view that the exemption provided in class 11 'Land Reclamation' does not apply in this case and therefore neither does the limitation on exemption, which restricts the area to 0.1ha.

Also included under Exempted Development – Rural, is Class 17:

- (a) Peat extraction in a new or extended area of less than 10 hectares, or

² Schedule 2 Part 3, (Article 6) Exempted Development — Rural

(b) Peat extraction in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into force of these Regulations.

- 7.3.2. The area where drainage works and peat extraction have taken place can be identified by comparing the aerial photography (orthophotos) on the Ordnance Survey Ireland website, osi.ie, for the years 2015 and the most recent available.
- 7.3.3. It appears to me that the area within which drainage works and peat extraction have taken place, within the identified site, since 2005 is likely to amount to a new or extended area of more than 10 hectares and would thereby not be exempted development, however to establish this would require a detailed survey.

7.4. **Restrictions on exempted development**

- 7.4.1. Development which requires EIA or AA is not exempted development.
- 7.4.2. The referrer argues that environmental impact assessment is required, per schedule 5 part 2, 1 (c) of the Planning and Development Regulations, 2001 as amended.
- 7.4.3. Schedule 5 of the 2001 regulations, sets out development for which EIA is required and includes at part 2, 1 (c) 'development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected, and at 2, 2 (a) peat extraction which would involve a new or extended area of 30 hectares or more.
- 7.4.4. I accept that bogland is also wetland, however, since drainage and/or reclamation of wetlands, and peat extraction, which includes drainage of peatland, are listed as separate forms of development in schedule 5, in my opinion this development falls to be considered under the development type 'peat extraction'.
- 7.4.5. The development would therefore be sub-threshold, ie. below the 30 ha at which EIA is mandatory.
- 7.4.6. Schedule 7 sets out criteria for determining whether development listed in part 2 of schedule 5 should be subject to an environmental impact assessment (i.e. sub-threshold development). The listed criteria include:
1. Characteristics of proposed development

in particular—

(b) cumulation with other existing development...

2. Location of proposed development - the environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground,

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

(i) wetlands, riparian areas, river mouths;

- 7.4.7. Having regard to the magnitude of loss of raised bogland in the EU and in Ireland the issue of the relative abundance of this natural resource and the biodiversity associated with the habitat is an issue which would require careful consideration in relation to the need to carry out an Environmental Impact Assessment, notwithstanding the 30ha threshold. The cumulation of impact of further drainage and peat extraction taken together with the existing bog development would also be a consideration, in relation to the extent of development carried out at this location.
- 7.4.8. The Board will note that the habitat types active raised bogs (code 7110, a priority habitat) and degraded raised bogs still capable of natural regeneration (code 7120) are listed in annex 1 of the Habitats Directive as habitats for which a site is eligible for identification as a site of community importance and for designation as a special area of conservation.
- 7.4.9. No details have been supplied with the question concerning the status of the high bog, which is referred to in the referral as of high biodiversity value. It has been noted under the heading planning history, earlier in this report, that the inspector's report on PA0046 refers to active raised bog and states that the bog supports EU Annex I Habitat Degraded Raised Bog.
- 7.4.10. From the aerial photographs it can be seen that there has been limited drainage of the centre of the site and that the drainage work being carried out is from the edges, as peat harvesting progresses inwards. The continuation of drainage and peat extraction is clearly impacting on Annex 1 habitat. In my opinion it would be

reasonable to conclude that environmental impact assessment is required for this development.

7.4.11. Appropriate Assessment

7.4.12. The referrer states that since the drainage discharge is to the River Blackwater this should, at a minimum, require Appropriate Assessment screening.

Article 9(1) of the Planning & Development Regulations, 2001 as amended states that development shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, (subarticle (viiB)). The site drains to the River Boyne and River Blackwater cSAC, and SPA, although some distance away, in excess of 4 km straight line distance, from the nearest Natura sites which are the River Boyne and River Blackwater cSAC, and SPA. These protected sites have water dependent habitats and species. In my opinion, having regard to the nature of the development and the known impact of drainage of peatland on river systems, it cannot be excluded on the basis of the information available that the development would not impact on these Natura sites, notwithstanding the distance they are removed from the subject site, and therefore Appropriate Assessment is required for the drainage, mechanical disturbance, extrusion of peat and removal of turf from this site.

8.0 Recommendation

8.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf is or is not development and is or is not exempted development:

AND WHEREAS Patrick Moran requested a declaration on this question from Meath Council and the Council failed to issue a declaration on or before the day of 25th August, 2019:

AND WHEREAS Patrick Moran referred this question to An Bord Pleanála on the 2nd day of September 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1) and 4(4) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Part 2 of Schedule 5 to the Planning and Development Regulations, 2001, as amended,
- (g) Schedule 7 to the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,
- (i) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat and removal of turf is development;

the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf at this location is not exempted development, having regard to the sensitivity of the area, the cumulative impact of such development taken together with similar development in the

area, which would require environmental impact assessment; and the drainage outflow to the River Boyne and River Blackwater SPA and cSAC, which having regard to the potential impact on these Natura sites, requires appropriate assessment.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf is development and is not exempted development.

Planning Inspector

9 December 2019

Appendices

Appendix 1 Photographs

Appendix 2 Meath County Development Plan 2013-2019 (extended), extracts.

Appendix 3 OSI aerial photograph extracts overlain:1995 and aerial premium.