



An
Bord
Pleanála

Inspector's Report

ABP-306242-19

Development	Leave to apply for substitute consent for the extraction of peat.
Location	Mountdillon, Cuil na Gun, Co. Westmeath, Milkernagh, Co. Westmeath and Co. Longford and Coolcraff, Co. Longford.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	N/A
Applicant(s)	Bord na Mona.
Type of Application	Leave to apply for Substitute Consent.
Observer(s)	None.
Date of Site Inspection	18 th March 2020
Inspector	Deirdre MacGabhann

Contents

1.0 Introduction	3
2.0 Site Location and Description.....	3
3.0 Proposed Development	3
4.0 Planning History.....	4
5.0 Legislative Context	5
6.0 Policy Context.....	7
6.1. Westmeath County Development Plan 2014 to 2020.....	7
6.2. Longford County Development Plan 2015 - 2021.....	7
6.4. Natural Heritage Designations.....	8
7.0 Grounds for Leave	8
7.1. Context	8
7.2. Exceptional circumstances	8
8.0 Responses by the Planning Authority	10
9.0 Assessment.....	11
9.2. Preliminary Matters (Section 177C(2)).....	11
9.9. Exceptional Circumstances (section 177D(2)(a) –(g)).....	13
10.0 Recommendation	16
11.0 Reasons and Considerations	16

1.0 Introduction

- 1.1. This report refers to an application for leave to apply for substitute consent under 177C(2)(b) of the Planning and Development Act, 2000, as amended, made by Bord na Mona for peat harvesting on lands at three sites straddling the border between County Westmeath and County Longford:
- Cuil na Gun (Coolnagun), in County Westmeath,
 - Milkernagh, which lies partly in County Westmeath and partly in County Longford, and
 - Coolcraff, in County Longford.
- 1.2. The application relates to the regularisation of peat harvesting carried out since 20th September 2012 and refers to a production field 542ha on a landholding of 1711ha (shown grey and yellow respectively on drawing no. BNM-LSC-504-03).

2.0 Site Location and Description

- 2.1. The three sites form part of the Bord na Mona's 'Mountdillon Bog Group', with associated cases travelling alongside this one, shown on Drawing no. BNM-LSC-504-02. The sites lie to the north east of the N4, as it runs between Mullingar and Edgeworthstown. Access to the sites is provided from the regional road network, with Coolcraff and Milkernagh accessed via the R396 and Milkernagh and Coolnagun accessed from the R395.
- 2.2. All of the sites are generally well screened from the public road network by mature trees, with views into them from short sections of minor and regional roads. A permanent rail line runs through Coolcraff bog to Milkernagh Bog and a guarded level crossing links the two sections of rail line where it crosses the R396.
- 2.3. The Milkernagh is split by the R395, which crosses the southern end of the bog. A permanent rail line also runs through this bog, connecting it to Cuil na Gun bog.

3.0 Proposed Development

- 3.1. The applicant states that the bogs included in the application have been used historically for the production of milled peat to supply horticultural peat and sod moss

for horticultural purposes and to supply Lough Ree power station. Due to the age of the bogs and the reduced requirement for milled peat, the production footprint has reduced. The application for leave concerns the following areas to be used for milled peat and sod moss production:

Bog	Ownership (ha)	Current Production Field Footprint (ha)
Cuil na Gun	670	252
Milkernagh	629	28
Coolcraff	412	262
Total Area	1711	542

(See Drawing no. BnM-LSC-504-03)

- 3.2. Production methods for milled peat and sod moss are described in pages 2 to 3 of the applicant's submission. Milled peat production is carried out from mid-April on and includes milling (top 10-15mm of the surface is broken into peat crumbs), harrowing, ridging and harvesting. Harvested peat is stockpiled and generally removed by rail, much of which was constructed in the 1950s-1970s. In a year of average weather conditions, approximately 12 harvests are completed in the same field. Sod moss is peat produced in block form for horticultural use. The sod moss extracted mechanically with specially equipped excavators from mini face-banks and left on the bog to dry. Once the required moisture content is achieved the sod moss is stockpiled prior to transportation for processing.
- 3.3. As part of the development of the bogs for milled peat production, parallel surface water drains at intervals of 15m have been created. The strip of bog between the drains forms the peat production fields. The drains generally fall towards the ends of the production field and are directed by open drain or pipe to a silt pond/s prior to discharge to a local watercourse. Submersible pumps operate in Milkernagh and Cuil na Gun.

4.0 Planning History

- 4.1. No planning applications have been made in respect of the subject site. Appendix 3.2 of the application sets out the history of peat extraction in the Moundillon Bog Group. It is stated that the development, including the subject bogs, commenced in

the late 1940's with the production of sod turf in 1952 and milled peat in the 1960s. Many of the bogs were purchased under CPO, with CPOs for the subject bogs between 1948 and 1959.

- 4.2. The development is managed in accordance with the IPC licence (P0504-01) and includes the submission of Annual Environmental Reports (AER) to the Environmental Protection Agency (EPA) (2008 to 2018) and regular audits and inspections by the EPA. A summary of the AER requirements is set out in Appendix 6 of the applicant's submission.
- 4.3. Immediately east of the same site, Coolcraff, the Board has granted permission for a windfarm with 13 no. turbines (ABP-300686-18).

5.0 Legislative Context

- 5.1. The following legal provisions/cases are relevant to the proposed development:
- 5.2. **Requirement for planning permission.** Section 4(4) of the Planning and Development Act, 2000 (as amended) requires that development which is exempt by virtue of certain sections of the act or the exempted development regulations, shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Section 4(4) of the Planning and Development Act 2000 was inserted by section 17 of the Environment (Miscellaneous Provisions) Act 2011, and came into effect on the 20th September 2012.
- 5.3. **Referrals/Case Law.** Under PL25.RL.2975, the Board decided, in April 2013, that the drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath, after the 20th September 2012, was development and not exempted development, having regard to the introduction of section 4(4) of the Planning and Development Act, as inserted section 17 of the Environment (Miscellaneous Provisions) Act, 2011, and on the grounds that the development required an environmental impact assessment and appropriate assessment. The referral was the subject of a Judicial Review (2013/398/JR) and on 8th February 2018 the High Court upheld the Board's decision [2018] IEHC 58.

5.4. **The Peat Regulations.** In January 2019 the government enacted the Peat Regulations, two pieces of legislation which provided for an exemption from planning permission for large scale peat extraction activity (i.e. an area of 30 hectares or over) and the introduction of a regulatory framework for these developments to be operated by the EPA:

- European Union (Environmental Impact Assessment)(Peat Extraction) Regulations 2019, and
- Planning and Development Act 2000 (Exempted Development) Regulations 2019.

5.5. On the 20th September 2019 the High Court found that the Ministerial Regulations were invalid on the grounds that they were inconsistent with the requirements of the EIA Directive and the Habitats Directive and the use of secondary legislation to give effect to the new licensing regime was *ultra vires* [2019] IEHC 685.

5.6. **Leave to apply for Substitute Consent.** Section 177D of the Planning and Development Act, 2000 (as amended), sets out the circumstances in which the Board can grant leave to apply for substitute consent. These include in section 177D(1) where it is satisfied that:

- a. an environmental impact assessment (EIA), a determination as to whether an EIA is required, or an appropriate assessment (AA), was or is required in respect of the development, and
- b. that exceptional circumstances exist, such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

5.7. In considering whether exceptional circumstances exist, under section 177D(2) of the Act, the Board is required to have regard to:

- a) whether the regularisation of the development would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive;
- b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

- c) whether the ability to carry out an assessment of environmental impacts of the development for the purposes of EIA or AA and to provide for public participation in such an assessment has been substantially impaired;
- d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuing of the development;
- e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- f) whether the applicant has complied with previous planning permissions granted or had previously carried out an unauthorised development;
- g) such other matters as the Board considers relevant.

6.0 Policy Context

6.1. Westmeath County Development Plan 2014 to 2020

- 6.1.1. Policies in respect of peatlands are set out in Chapter 5 of the current Westmeath County Development Plan (see attachments). These recognise the contribution that bogs make to the archaeological, cultural, natural history and landscape of the county. Policies seek to protect and conserve designated peatland areas and landscapes, to plan and prepare for the future sustainable and environmentally sensitive use of large industrial bog sites when peat harvesting finishes and to exercise control over peat extraction which would have significant impacts on the environment.

6.2. Longford County Development Plan 2015 - 2021

- 6.3. Section 4.4 of the Longford County Development Plan sets out policies in respect of peatlands (see attachments). These include supporting the preparation of a holistic plan for the development of industrial peatlands at a regional scale that promotes economic development, tourism, rural diversification, environmental protection and natural and cultural heritage awareness.

6.4. Natural Heritage Designations

6.4.1. The subject sites do not lie within any designated site, but there are a number of national and European sites in the vicinity of the site (see attachments). These include:

- Approximately 400m to the north of Coolcraff bog, Lough Kinale and Deragh Lough are designated as a NHA and SPA.
- To the east of Coolcraff, c.60m, is Lough Bane, a pNHA.
- To the east and south west of Cuil na Gun is Garriskil Bog, an NHA, SAC and SPA and to the south east of Cuil na Gun, is Lough Derravaragh, a NHA and SPA.
- To the south west of Cui na Gun, c. 6km is Lough Iron a SPA.

6.4.2. The subject site would appear to be hydrologically connected to Lough Derravaragh, Garriskil Bog and Lough Iron.

7.0 Grounds for Leave

7.1. The applicant sets out the following grounds:

7.2. Context

7.2.1. Bord na Mona has been engaged in the production of milled peat for energy fuel and horticultural uses for a prolonged period of time that predates the Planning and Development Act, 1963 and the relevant EU Directives, and it has operated under an EPA IPC licence since April 2000. It now seeks to regularise the planning status of historic peat extraction (and ancillary works).

7.3. Exceptional circumstances

- a) **Circumvention:** As a rEIA and rAA will be carried out if Leave to Apply for SC is granted then circumvention will not occur.
- a) **Belief:** There has been considerable uncertainty regarding the planning status of peat extraction between 2012 and 2019. Historically it was exempted development under section 4 (1) (a) of the P&D Act 1963, this

status was maintained under Class 17, Part 3, Schedule 2 of the P&D Regulations 2001, and up until the Environment (Misc. Provisions) Act 2011 amended s.4 (4) of the P&D Act 2000 to remove the exemption from development that required EIA or AA (from 20/09/2012). Following a series of planning referrals, court judgements and appeals which concluded that peat extraction was both works and use, and that peat extraction involving a new or extended area of 30ha or more required EIA & planning permission (Class 2(a), Part 2 Schedule 5), the Peat Regulations 2019 were published and subsequently quashed in late 2019.

- b) **Impairment:** The applicant has engaged in peat extraction since early 1950s and has operated under an EPA licence since May 2000 for site in excess of 50ha. The IPC licence application involved statutory public participation (details on file) and the licence contains 14 conditions (including monitoring, emissions, water protection, and waste management and bog rehabilitation). The site is subject to regular EPA visits and audits and the Annual Report (AER) can be accessed by the public on the EPA's website. The applicant participated in the preparation of a Code of Practice for peatlands, regularly engages with public bodies, local authorities and interest groups, and produces a periodic Biodiversity Plan. If Leave to Apply is granted, then a rEIAR and rNIS will be submitted which will allow for further public consultation.
- c) **Effects:** If leave to Apply is granted, then a rEIAR and rNIS will be submitted with a detailed assessment of significant effects. Ongoing extraction activities since the 1950s have changed the immediate and adjacent habitats (hydrology and vegetation). Subject sites are not covered by any European designations but are connected to the Lough Derravaragh SPA and Lough Iron SPA (designated in 1995) via on-site drainage. Ongoing monitoring of ammonia and sediments in drainage discharges and extraction works have been carried out in accordance with IPC licence conditions.
- d) **Remediation:** The bogs have been operated in accordance with IPC licence since 2000, which has been amended to take account of evolving environmental protection legislation (including the 2009 EU Surface Water Regulations (2009) with the object of achieving "Good Status"). Any historic

effects on water quality (including aquatic ecosystems and protected species) have been remediated and recovered by way of Licence conditions which also require the preparation of a Bog Rehabilitation Plan.

- e) **Compliance:** The applicant owns c.80,000ha with c.240 planning applications from c.14 LAs for various development and some developments are pre-1963. The applicant has never been the subject of a S.160 enforcement action, although there have been some section 5 referrals to the Board for which no decisions have yet been issued.
- f) **Other such matters:** Considerable reduction in production footprint, aim to reduce by 90% by 2025 and current stocks will run out by 2021 if no further works are permitted. Bogs not required for production will be rehabilitated and developed for other uses (including windfarms). All three of the bogs in this group are used for horticulture. This business accounts for 16% of Bord na Mona's turnover and employs 200 workers. The commercial horticulture industry employs 6,600 people directly and 11,000 indirectly. No viable peat substitutes currently available and Bord na Mona's contribution to this industry is vital.

8.0 Responses by the Planning Authority

8.1. The planning authorities make the following observations in response to the application:

- The applicant's activities have been subject to an IPC/IPPC licence since 2000 and much of the development referred to in the application predates the EIA and Habitats Directives.
- Having regard to the historic and recently evolving planning status of industrial peat extraction, the planning authority consider it is appropriate that the Board grant leave to the applicant to apply for substitute consent to allow the requisite remedial EIA and AA to be carried out and a planning decision made on the bogs which are the subject of the application.
- The regularisation of the development would not circumvent the purpose and objectives of the EIA or Habitats Directive. Given the history of the peat extraction and its planning status, the planning authority do not consider that

the applicant could have reasonably had a belief that the development was not unauthorised. An application for substitute consent would deal with significant effects on the environment and any adverse effects on European sites.

- Request the Board to consider the social and economic impact of the complete cessation of Bord na Mona activities on the County and the importance of allowing a reasonable amount of time to transition in terms of alternative employment and active natural restoration of the cutaway bogs.

9.0 Assessment

9.1. Section 177D of the Planning and Development Act, 2000 (as amended), sets out the circumstances in which the Board can grant leave to apply for substitute consent. I consider these matters in turn.

9.2. Preliminary Matters (Section 177C(2))

9.3. **EIA.** The subject development comprises peat harvesting activities from Bord na Mona's Mountdillon Bog, comprising a landholding at 1711ha and a current production field of 542ha. Under section 172(1) of the Planning and Development Act 2000 (as amended), environmental impact assessment is mandatory for '*Peat extraction which would involve a new or extended area of 30 hectares or more*' (Class 2(a), Part 1, Schedule 5 of the Planning and Development Regulations 2001, as amended), indicating that substantial peat harvesting operations are likely to give rise to significant environmental effects. Under PL.25.RL.2975, the Board decided that, having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001 (as amended), continued works to extract peat on a substantial scale since September 2012 required environmental impact assessment. In this instance, the application refers to a significant site, substantially in excess of the threshold area for EIA in the Regulations and the development discharges into downstream water bodies which are environmentally sensitive and protected by national and European legislation, with the potential for impacts on water quality and water dependent habitats and species. The development also occurs in a wider environment where there is other large scale peat extraction, with

the potential for in combination effects. Having regard to the foregoing, I consider that the substantial development carried out at this peatland site since September 2012 would have required environmental impact assessment.

9.4. **Screening for AA.** The subject site lies within a wider landscape that is host to a number of European sites. These include Lough Derravaragh and Lough Iron SPA and Garriskil Bog SPA/SAC, to the south west and south east of the site. From the information on file it would appear that the site drains into the River Inny, which flows into and out of Lough Derravaragh Lough, alongside Garriskil Bog and into Lough Iron (see attachments). The site may also form part of the territory of mobile species that are of conservation interest in the surrounding SPAs. Conservation interests of Lough Derravaragh and Lough Iron SPA and Garriskil Bog SPA and SAC are:

European Site	Conservation Interest
Lough Derravaragh SPA (site code 004043)	Whooper Swan (<i>Cygnus cygnus</i>) [A038] Pochard (<i>Aythya ferina</i>) [A059] Tufted Duck (<i>Aythya fuligula</i>) [A061] Coot (<i>Fulica atra</i>) [A125] Wetland and Waterbirds [A999]
Lough Iron SPA (site code 004046)	Whooper Swan (<i>Cygnus cygnus</i>) [A038] Wigeon (<i>Anas penelope</i>) [A050] Teal (<i>Anas crecca</i>) [A052] Shoveler (<i>Anas clypeata</i>) [A056] Coot (<i>Fulica atra</i>) [A125] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] Wetland and Waterbirds [A999]
Garriskil Bog SPA (site code 004102)	Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]
Garriskil Bog SAC (site code 000679)	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the <i>Rhynchosporion</i> [7150]

- 9.5. *Conservation objectives* of the European sites are to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interest (Lough Derravarragh SPA, Lough Iron SPA and Garriskil Bog SPA) or to restore the favourable conservation condition of the habitats of special interest, as defined by specific attributes and targets (Garriskil Bog SAC).
- 9.6. *Likely significant effects.* From the information on file and on the EPA's website, under the applicant's IPC licence (P0504-001), it is evident that peat harvesting requires substantial drainage works and the discharge of water from the site, with the risk of sedimentation and change in the chemical status of discharge waters. Environmental controls are also in place for noise and dust. Consequently, there is a risk of decline in downstream water quality with the potential for impacts on water dependent habitats and species. There is also a risk of disturbance of mobile species. At a high level, therefore, it is evident that there is a risk of significant effects arising from the development, individually or in combination with other projects, on European sites.
- 9.7. *Appropriate Assessment Conclusion.* On the basis of the information provided with the application, it is not possible to establish that the development/works carried out since September 2012, individually, or in combination with other plans or projects would not be likely to have a significant effect on European site Nos. 004043, 004046, 004102 and 000679, or any other European site, in view of the site's Conservation Objectives and a Stage 2 Appropriate Assessment (and submission of NIS) would therefore have been required.
- 9.8. **Conclusion in respect of preliminary matters.** Having regard to the above, I am satisfied therefore, that an environmental impact assessment is required and that an appropriate assessment of the development/works carried out at this peatland site since September 2012 would have been required, and that the applicant has satisfied section 177D(1) of the Planning and Development Act 2000 (as amended).
- 9.9. **Exceptional Circumstances (section 177D(2)(a) –(g))**
- 9.10. *Whether the regularisation of the development would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.* The purpose of the EIA Directive is to provide an assessment of the likely environmental effects of a

development prior to decision making, and to take account of these effects in the decision making process. The purpose of the Habitats Directive differs from EIA. It seeks to ensure the conservation of a wide range of rare, threatened or endemic animal and plant species and conservation of rare and characteristic habitat types.

- 9.11. From the information on file, it is evident that peat harvesting at the application site is long established, preceding the Planning Act of 1963 and the EU Directives in respect of EIA and AA. If the Board decide to grant the applicant leave to apply for permission, any application would be accompanied by a rEIAR and rNIS, and any subsequent decision to grant or refuse permission would be made on the basis of an assessment of the likely effects of the development on the environment and the likelihood of any significant effects on European sites. I do not consider therefore that an opportunity for regularisation of the development would circumvent the purpose or objectives of the EIA Directive or Habitats Directive.
- 9.12. *Whether the applicant had or could reasonably have had a belief that the development was not unauthorised.* It is evident from the information on file, including the Board's determination of RL2975 in 2013, the subsequent Judicial Review of the case and the Peat Regulations, which were ultimately set aside, that there has been a lack of clarity regarding the status of peat harvesting in planning law. I am satisfied, therefore, that the applicant had or could reasonably have had a belief that the development was not unauthorised.
- 9.13. *Whether the ability to carry out an assessment of environmental impacts of the development for the purposes of EIA or AA and to provide for public participation in such an assessment has been substantially impaired.* The application before the Board is for leave to apply for substitute consent for a development that commenced on the 20th September 2012 i.e. when section 4(4) of the Planning and Development Act 2000 (as amended) came into effect. Since April 2000 the applicant has operated under an IPC Licence issued by the EPA (P0504-01) and has submitted Annual Environmental Reports since 2008. These are all available on the EPA website (www.epa.ie) with reports on emissions to water, air, waste arising and energy and water consumption etc. and are available to the public. The Licence and environmental monitoring reports indicate how the development has operated over the period since September 2012 and would contribute to baseline information for any environmental impact assessment/appropriate assessment. Similarly, I note that

the applicant has engaged with the Department of Arts, Heritage and the Gaeltacht to develop principles for the protection of archaeology in the applicant's bogs and engages with other public bodies in relation to the work carried out on its peatlands.

- 9.14. I consider, therefore, that there is no substantial impediment to the applicant's ability to carry out an assessment of the environmental impacts of the development. Any application for substitute consent would require public and statutory consultation and would therefore provide for public participation in the assessment process.
- 9.15. *The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuing of the development.* Peat harvesting activities has resulted in changes to the habitat and drainage characteristics of the subject site, however much of this would have occurred prior to September 2012. Since 2000 much of the original emissions to air, water, waste, resource consumption, incidents and complaints have been actively managed under EPA licence, with the licence updated from time to time in light of changes in national or European legislation. Environmental protection measures are set out in Appendix 5.2 of the applicant's submission and most recent AERs indicate a high level of compliance with emission limit values.
- 9.16. Having regard to the above, and all of the information on file, there is no evidence to indicate actual or likely significant effects on the environment or on any European site resulting from the development. Notwithstanding this, if the Board decided to grant leave to the applicant to apply for substitute consent, the likely effects of the development on the environment or European sites would be addressed in the application, by way of an rEIAR and rNIS, and adjudicated upon on this basis.
- 9.17. *The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.* As stated by the applicant, since 2000 the subject development has been operating under licence from the EPA, with the objective of the licence to protect the environment. During this period, changes in legislation have resulted in changes to the licence, to bring it in line with current, and often higher standards, and with this the opportunity to remediate some of the historic effects of peat extraction, for example on water quality. The applicant also refers to the Cutaway Bog Remediation Plan, required under the terms of the licence, following termination of use of all or parts of the applicant's bogs, to ensure

proper closure of peat extraction activities and protection of the environment. Having regard to the foregoing, I would accept there are no evident impediments to the remediation of potential significant effects or adverse effects of the development.

- 9.18. *Whether the applicant has complied with previous planning permissions granted or had previously carried out an unauthorised development.* Details of the planning permissions granted to the applicant are set out in Appendix 8 and no enforcement cases have been taken against the applicant. A number of section 5 referrals are with the Board for declarations in relation to peat extraction in County Offaly and County Laois (e.g. PL19.RL3517; 3518; 3526; 3527; 3528), but these have not been determined.
- 9.19. *Such other matters as the Board considers relevant.* As stated by the applicant and planning authority, I would acknowledge that peat harvesting makes an important contribution to the horticultural industry in the State and provides an important source of rural employment. I also note that currently there is no suitable alternative to peat for the Irish commercial horticultural industry.

10.0 Recommendation

- 10.1. Having regard to the foregoing, I recommend that the Board grant leave to apply for substitute consent for the following reasons and considerations.

11.0 Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act, 2010, the size and scale of the peat harvesting area that was carried out subsequent to 20th September 2012 and to the location of the peatland development in proximity to European sites, the Board is satisfied that:

- (a) an environmental impact assessment and an appropriate assessment was or is required in respect of the development concerned, and
- (b) exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

In this regard, the Board considered that -

- the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- the applicant had or could reasonably have had a belief that the development was authorised;
- 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;
- the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated; and
- applicant has not otherwise carried out any unauthorised development.

Deirdre MacGabhann

Planning Inspector

20th April 2020