



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307745-20

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#### Development

Leave to Apply for Substitute Consent for Peat Harvesting.

#### Location

Ballygarvey Bog, Townlands of Ballygarvery, Carrigagh, Curristeen and Bardenstown, Co. Westmeath.

#### Planning Authority

Westmeath County Council

#### Applicants

Klasmann-Deilmann Ireland Ltd

#### Type of Application

Leave to apply for substitute consent

#### Date of Site Inspection

30 October 2021

#### Inspector

Dolores McCague

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## 1.0 BACKGROUND TO APPLICATION

1.1.1. In the the sequence of events which have led to this application, made on ~~30<sup>th</sup> July 2020~~, the following is of relevance:

The 1963 Local Government (Planning and Development) Act under section 4(1) (a) included use for agriculture as exempted development. The definition of ‘agriculture’ included turbary.

The EIA directive was adopted on 27 June 1985 – 85/337/EEC. It included at Annex I peat extraction of 150ha. Annex II allowed states to adopt their own additional development categories based on criteria laid down in Annex III.

The Habitats Directive was adopted on 21 May 1992 – 92/43/EEC and included in its Annex 1 list: (7000) Active raised bog, and (7120) Degraded raised bog capable of regeneration.

The requirement for EIA was introduced into the planning system by the EIA Regs 1989. The First Schedule sets out developments requiring EIA. Part II (2) is extractive industry. Listed at 2(a) is peat extraction which would involve a new or extended area of 50ha.

Section 6 (b) amended Section 4(1) (a) to de-exempt the foregoing.

The Planning and Development Act 2000 altered the definition of agriculture omitting turbary.

The Planning and Development Regulations 2001 required EIA to be carried out for peat extraction which would involve a new or extended area of 30 ha or more (listed at 2(a) of part 2 of schedule 5) and introduced the concept of subthreshold development, in relation to planning applications, based on schedule 7 criteria.

Planning and Development Regulations 2001 included as exempted development (listed at part 3 of schedule 2) at class 17(a) peat extraction of a new or extended area of less than 10 ha, and 17(b) peat extraction of more than 10 ha if previously drained. This exemption was amended in 2005 by the Planning and Development Regulations 2005<sup>1</sup> making it conditional on not being likely to have significant effects on the environment.

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<sup>1</sup> With effect from 14<sup>th</sup> day of July 2005

On a high court challenge to a Section 5 determination of the Board (25RL.2969 and 25RL.2975 15<sup>th</sup> April 2013<sup>2</sup>) in relation to a question regarding peat extraction, where the Board had determined that the extraction of peat is both the carrying out of works and material change of use, and that the continued works to extract peat was development and required EIA; Mr Justice Meenan, found that peat extraction being works as well as use, gives rise to the requirement for EIA; that the development is no longer an exempted development; the removal of the exemption is not retrospective; Section 4(4) does not make unlawful that which was lawful at the time it was done; the effect of s. 4(4) is prospective; (IEHC 58 (2018) delivered 8<sup>th</sup> February 2018).

The Environment (Miscellaneous Provisions) Act 2011 section 17, amended 4(4) of the 2000 Act, such that development shall not be exempted if an environmental impact assessment is required. This is not to apply to development begun prior to the Act and completed not later than 12 months after.

A judicial review, which challenged the foregoing legislative amendments stated as having 'the effect of exempting peat extraction that involves an area of greater than 30 hectares from the requirement to obtain planning permission', contending that they are inconsistent with EU environmental law, was granted by the High Court (2019 No. 222 JR) in a judgement of Mr Justice Garrett Simons, delivered on 20 September 2019.

EPA licensing of certain large-scale peat extraction under Part IV of the Environmental Protection Agency Act 1992, is required. The threshold is the extraction of peat in the course of business which involves an area exceeding 50 hectares (1.4).

## 1.2. **SITE DESCRIPTION**

- 1.2.1. The site is located in the townlands of Ballygarvery, Carrigagh, Curristeen and Bardenstown, Co Westmeath, between the villages of Rathowen Co Westmeath and Legan, County Longford.

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<sup>2</sup> Which determined that planning permission for the continuation of peat extraction was required since 20<sup>th</sup> Sept 2012.

1.2.2. The site is given as 99ha.

## 2.0 LEGISLATIVE BACKGROUND

2.1.1. Section 177C (1) allows a person who has carried out certain forms of development to apply to the Board for leave to make an application for substitute consent in respect of that development.

2.1.2. Section 177C (2) provides that the type of development to which the foregoing applies shall be development which has been carried out where an EIS, a determination as to whether an EIS is required, or an Appropriate Assessment (AA) was or is required. Such an application for leave to apply to make an application for substitute consent may be made where the applicant considers: -

(a) That an earlier permission granted by a planning authority may be in breach of the law or because of an error of fact or law or a procedural error, or

(b) The applicant is of the opinion that exceptional circumstances exist which would permit the regularisation of the development by permitting an application for substitute consent.

2.1.3. The Board may grant leave to make an application for substitute consent where it is satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of development by permitting an application for substitute consent.

2.1.4. The Board, when considering whether exceptional circumstances exist such as should allow an application for leave to be successful (per Section 177D(2)), must have regard to these matters: -

(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 has or could reasonably have had a belief that the development was not unauthorised.

- (c) Whether the ability to carry out an EIA or AA and to provide for public participation in such assessments has been substantially impaired.
- (d) The likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development.
- (e) The extent to which significant effects on the environment or adverse effects on a European site can be remediated.
- (f) Whether the applicant has complied with previous planning permissions or has previously carried out unauthorised development.
- (g) Such other matters as the Board considers relevant.

## **3.0 Policy**

### **3.1. Development Plan**

- 3.1.1. Westmeath County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

Re. peatlands dealt with in section 12.17 of the plan which includes:

The Council recognises the importance of peatlands as a major natural, archaeological and non-renewable resource in addition to recognising the important historical traditions and peat management skills associated with cutting turf for domestic use. In their natural state peatlands act as long-term sinks for atmospheric carbon dioxide. Peatlands are the most important long-term carbon store in the terrestrial biosphere. They sequester and store atmospheric carbon for thousands of years. Given the extent of intact and relatively intact raised bogs in Westmeath, considerable potential exists to use this valuable resource to mitigate against the impacts of climate change.

Policy objectives include:

CPO 12.64 - Protect the county's designated peatland areas and landscapes, including any ancient walkways through bogs and to conserve their ecological, archaeological, cultural, and educational heritage.

CPO 12.65 - Require the preparation of Hydrological Reports for significant developments within and in close proximity to peatlands, and to take account of same in the assessment of impacts on the integrity of peatland ecosystems.

CPO 12.66 - Exercise control of peat extraction, both individually and cumulatively, which would have significant impacts on the environment, in accordance with legislative provisions, in the interest of protecting and enhancing biodiversity and addressing climate change.

### **3.2. Natural Heritage Designations**

3.2.1. The nearest protected sites are:

Glen Lough SPA (site code 004045) approx. 2km straight line distance from the subject site;

Lough Iron SPA (site code 004046) (approx. 3.5km straight line distance from the subject site; and

Garriskil Bog SPA (site code 004102) approx. 6.5km straight line distance, from the subject site.

## **4.0 APPLICANT'S CASE**

4.1.1. In support of the application a letter has been submitted from Tobin Consulting Engineers which includes:

KDI ref Ballygarvey Bog.

The site has been operated by Klasmann-Deilmann Ireland Ltd KDI Killinagh Rathowen since 1982. Drainage and turf cutting has been carried out on the site for a considerable period of time, prior to the lease of lands to KDI.

- Lease:

The entrance from Local road, the L 1096 (including associated security gates), access road, car parking and truck parking areas (for haulage vehicles), hardstand are all in-situ and ready for use.

Extensive water management infrastructure is in place at the site and will be further expanded to comply with the requirement of the BATNEEC Guidance Note- Extraction of Peat within the proposed IPPC licensed area.

The existing drainage infrastructure within the site comprises surface water drains within the boundaries of the site, with settlement of water occurring in 4 no. surface water settlement lagoons prior to outfall to the receiving environment.

It was necessary to steadily drain the bog to reduce the moisture content of the peat material. Drains were opened up across the bog to reduce the water content of the surface and increase the bearing capacity, thus allowing the bog to be traversed by plant and machinery. The drainage plan involves progressively deepening the drains. The drainage network and peat harvesting heavily influences the current appearance of the bog. The bog has been divided into a number of compartments, referred to as peat fields. These surface drains discharge to a number of settlement lagoons at the site boundaries. The field drains are excavated and maintained by excavators or ditcher pulled by tractor.

The bog is part of peatland area located to the north of the River Inny and 2.7km southwest of village of Rathowen in Co Westmeath. Access to the bog site is via county road via an existing entrance. The site once comprised part of large peat area with drainage ditches.

Peat historically was extracted using hand held equipment for turf cutting. Peat is stored and removed from site.

- The peat harvesting process is described.

#### Milled Peat Harvesting Process

- Milled peat harvesting involves the harvesting of peat using the Haku production system. The bog is milled with a miller, then harrowed, ridged and collected into trailers and brought to a central stockpile and covered. The production of milled peat is weather dependent and can vary from 15 days harvesting per year to a maximum of 40 days. The production system used (Haku system) means that each harvest takes a minimum of 3 days and may be much longer depending on the weather. All



production phases are carried out using agricultural tractors, trailers and specialized peat equipment.

#### Step 1 – Ditching

- The machinery used is an agricultural type tractor and a wheel ditcher. It involves the removal of loose material from the drains and deepening to maintain adequate drainage.

#### Step 2 – Milling

- The top 30mm of the surface of each field is loosened using a miller towed behind an agricultural tractor. Milling is only undertaken during a period of dry weather, typically in the summer and autumn periods.

#### Step 3 – Harrowing

- The drying of the milled layer is promoted by using a spoon type harrow (12 m wide) towed behind an agricultural tractor. Harrowing leaves the peat in small ridges to aid the drying. Harrowing is only carried out in periods of dry weather. It normally requires the peat to be harrowed on two occasions to have the peat sufficiently dry for ridging.

#### Step 4 – Ridging

- Dry peat, which has reached the target moisture content of 60%, will be ridged in the middle of each production field using a 12m wide V shaped ridger. The ridger is pulled behind an agricultural tractor.

#### Step 5 – Collecting and Stockpiling

- The peat is loaded from the ridged row into trailers for transport to the stockpiling area. This is done by a peat collector using a belt conveyor towed by a tractor. The belt conveyor transports the peat into the tractor towed trailers. The collected peat is then transported to a stockpile within the site. The stockpiles are constructed using an excavator. All of the stockpiles are covered using polythene sheeting to ensure that the peat remains dry and to reduce the potential for dust emissions.

#### Planning:

As the lands were drained pre 1964, harvesting activities were understood by KDI to have been exempted development.

LG P&D Act 1963 included turbary as an activity within the definition of agriculture. Agriculture was exempted development.

#### 2001 Regulations

Class 17(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.

In 2019 the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019 (S.I. No. 4/2019) - were introduced to provide a regulatory framework for large-scale commercial peat extraction to ensure that applications could be made to the EPA for licences for the extraction of peat in respect of developments of 30ha or more.

The 2019 Regulations were made under the European Communities Act 1972 and amended the EPA Act 1992, as amended, and the P&D Act 2000, as amended. The intention was to ensure that EIA and Habitats Assessments and related consultations would be carried out, as required under the EIA Directive and the Habitats Directive as part of assessments by the EPA of applications for Integrated Pollution Prevention and Control (IPPC) licences for large-scale peat extraction activities (areas of 30ha or more).

The 2019 Regulations were in place from January 25, 2019 and under which KDI continued to operate until the issuing of the Order of the High Court of Simons J dated October 18, 2019 when the High Court quashed the 2019 Regulations in the case Friends of the Irish Environment Limited & others v Minister for Communications, Climate Action and Environment & others (2019) IEHC 646 and 685.

Arising from the judgement the applicant makes this application for leave for substitute consent and that exceptional circumstances exist such that it is appropriate for the Board to permit an application for leave to apply for substitute consent as set out in Section 177C of the Planning and Development Act 2000 as amended, for the reasons set out in this letter.

Exceptional Circumstances	KDI response
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<p>Whether the regularisation of the development would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.</p>	<p>The regularisation of the site subject to development would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive. Based on the Draft NIS and site survey work conducted it is determined that the existing development is not currently negatively affecting any of the European sites detailed. Existing water pollution controls are adequate for protection of local water quality. Quantifying bird species in Glen Lough SPA are not affected by the development. In addition, should leave to apply for substitute consent be granted, the subsequent application for substitute consent will be accompanied by a Remedial Natura Impact Assessment (rNIS) and remedial Environmental Impact Assessment Report (rEIAR) therefore ensuring that regularisation of the site would not circumvent the EIA or Habitats Directives.</p>
<p>Whether the applicant has or could reasonably have had a belief that the development was not unauthorised.</p>	<p>The lands at Ballygarvey Bog have undergone progressive drainage as can be seen on the historical maps. As such the site benefitted from pre 1964 status. It was not until the ruling on December 7, 2018 in Bulrush Horticulture Ltd v An Bord Pleanála &amp; ors; Westland Horticulture Ltd &amp; ors v An Bord Pleanála &amp; ors (2018) IEHC 808/2013 398 JR; 2013 424 JR by Meenan J that the issue of planning permission being required for the harvesting of peat was clarified. The EU (Environmental Impact Assessment) (Peat Extraction) Regulations 2019, and (ii) the Planning and Development Act 2000 (Exempted Development) Regulations 2019 (since revoked) provided a mechanism to regulate peatland extraction in accordance with the EIA and Habitats Directives and</p>

	<p>demonstrated that it was the intention of the legislature that the harvesting of peat should be regulated by the EPA via a licensing system rather than under the planning permission regime.</p>
<p>Whether the ability to carry out an EIA or AA and to provide for public participation in such assessments has been substantially impaired.</p>	<p>Ballygarvey Bog is not located within a natura 2000 site and nearby factory which it supplies has a long planning history which allowed for substantial public participation.</p> <p>In the event that a substitute consent application is allowed the rNIS, rEIAR and the application documentation will be subject to full public participation. It is considered that the ability to carry out such assessment has not been compromised.</p> <p>Any subsequent application for planning permission will at a minimum involve the preparation of an EIAR and AA Screening Report, processes which will involve public consultation and opportunities for public participation.</p> <p>Finally, should planning permission be granted, the Applicant will be required to prepare and submit an application to the EPA for an IPPC licence, which will involve additional consultation and opportunities for public participation in the consent process. Any EIAR and AA reports produced as part of the planning process will be required to be submitted to the EPA during this process.</p> <p>It is therefore contended that the ability to carry out the required assessments and to provide for public participation in the assessments has not been substantially impaired.</p>
<p>The likely significant effects on the environment or</p>	<p>The site is not located within a Natura 2000 site. The nearest SAC/SPA is Glen Lough SPA located 2km north</p>

<p>adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development.</p>	<p>of the Ballygarvey Bog. There is no surface water nor ground connection between the peatlands and the SPA. Winterbird surveys do not show any connection between the surrounding SPAs and the peatland areas.</p> <p>Any actual or likely significant effects on the environment or adverse effects on the integrity of a European site can only be properly assessed through the carrying out of an environmental impact assessment and appropriate assessment.</p> <p>However, given the location of the site relative to watercourses and separation distances from European sites, it is considered reasonable to expect that emissions and discharges from the activities can be managed effectively so as to minimise the potential of an adverse impact arising.</p>
<p>The extent to which significant effects on the environment or adverse effects on a European site can be remediated.</p>	<p>The site is not located within a Natura 2000 site. The nearest SAC/SPA is Glen Lough SPA located 2km upgradient of Ballygarvey Bog. There is no surface water or ground connection to the site.</p> <p>KDI is committed to detailed site rehabilitation plans which will cover the measures to be implemented by KDI upon cessation of harvesting to facilitate long term beneficial rehabilitation of the worked bog. KDI's parent company, Klasmann-Deilmann GmbH has extensive experience in the restoration of peat harvesting sites in Germany, Lithuania and Latvia.</p>
<p>Whether the applicant has complied with previous planning permissions or has previously carried out</p>	<p>KDI has a long history of engaging with and complying with planning conditions.</p> <p>Peat extraction has traditionally been free from control under planning legislation. Section 4 of the Local Government (Planning &amp; Development) Act 1963 provided that development consisting of the use of any</p>

<p>unauthorised development.</p>	<p>land for the purposes of ‘agriculture’ was exempt from the requirement to obtain planning permission.</p> <p>The definition of ‘agriculture’ included the use of land for turbary. The site had undergone drainage prior to the 1850s and was under extraction prior to 1964.</p> <p>The applicant has carried out the peat harvesting activity either in accordance with the law as a matter of fact, or in the reasonable belief that planning permission was not required for the activity and therefore, could not have been unauthorised until the most recent decision of the High Court which struck down the Government scheme affecting almost the entire Irish commercial peat extraction industry, including KDI.</p>
<p>Such other matters as the Board considers relevant.</p>	<p>Peat drainage and harvesting has taken place on the sites since at least the 1900s. Peat is the principal ingredient used in professional growing media due to its superior performance and is key to a secure food supply in the absence of comparable or superior alternatives. KDI has invested almost €1 million in plant to produce woodfibre to reduce its dependence on peat and to secure long term employment and the transition to a lower carbon future.</p> <p>Ongoing management of the sites by KDI will in the future allow for the implementation of agreed post closure and rehabilitation plans to ensure that full advantage is taken of the biodiversity potential of the sites. KDI has already made financial provision of almost €300,000 in its most recent statutory account to cover the costs of after-use and it increases this provision annually at an average rate of about 10%. Klasmann-Deilmann GmbH has restored over 20,000 acres of peatland across Europe and propose to rehabilitate the</p>

	<p>peatland, post closure in accordance with company policy. Should harvesting operations, and therefore KDI involvement cease, the potential for effective rehabilitation is significantly reduced.</p> <p>KDI provide employment within a rural area where there are few indigenous industries. This employment is both in the form of direct and indirect employment in harvesting operations and the purchase of goods and services to support its operations.</p> <p>KDI employs an average of 72 fulltime equivalents per annum which generates an annual payroll cost of €2.6 million in an area of the midlands which does not present too many employment opportunities.</p> <p>In addition, the company buys fuel locally, pays rent to local farmers and land owners and purchases pallets and packaging locally, buys spare parts and engages repairs and maintenance contractors.</p> <p>The company makes annual contributions to three local national schools, sponsors one of the local GAA clubs and makes annual donations to two local churches as well as providing sponsorship for local agricultural shows and charitable events.</p> <p>The company is regarded locally as a good and responsible employer and corporate citizen and is accredited under the ISO9001:2015, IOS 14001:2015 and 45001:2018 standards.</p>
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## 5.0 PLANNING AUTHORITY RESPONSE

- 5.1.1. The Westmeath County Council response includes:
- 5.1.2. The subject development activity does not appear to have been subject to an IPC/IPPC licence from the EPA. It is further noted from the documentation submitted

that substantial drainage and development activity in respect of the subject lands pre-dated the EIA and Habitats Directives.

- 5.1.3. The legislative context outlined in the applicant's submission is referred to. In that context and subject to compliance with all legislative requirements, Westmeath County Council considers that it is appropriate that the Board grant leave to apply for substitute consent to allow the requisite remedial EIA and AA to be carried out and a planning decision to be made on peat harvesting activity within Ballygarvery Bog, which is the subject of this application.
- 5.1.4. It is noted from documentation submitted that KDI's acquisition of the leasehold interest in this site dates from 1982. Furthermore, according to Council records, there appears to be no planning history or enforcement action associated with this development. It is not considered that the regularisation of development is intended to circumvent the purpose and objectives of the EU EIA or EU Habitats Directive. It is also not considered, given the history, that the applicant had, or could reasonably have had a belief that the development was unauthorised. The requested substitute consent process will now deal with significant effects on the environment and any adverse effects on the integrity of any relevant European site.
- 5.1.5. In regard to such matters as An Bord Pleanála consider relevant, it is suggested that the Bord should consider the social and economic impact of the complete cessation of peat harvesting to be of critical importance to the County. The economic activity generated by KDI in recent decades has made a considerable contribution to the wellbeing and development of this area. The easing of the impact from the immediate closure of such commercial activity and the allowance of a reasonable amount of time to allow for a just transition in terms of alternative employment and active natural restoration of the cut away bogs is considered a relevant issue that should be considered.

## 6.0 **ASSESSMENT**

### 6.1. The first test:

177D.— (1) The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental



impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned.

Having regard to the scale of the development, which exceeds the EIA threshold, EIA was or is required.

The site is located in a sensitive location where, having regard to its proximity to Glen Lough SPA (site code 004045), Lough Iron SPA (site code 004046) and Garriskil Bog SPA (site code 004102), all designated for waterbirds, and the potential for in-combination effects with other projects to arise, in particular with the extensive peat extraction works occurring on nearby sites in north Westmeath and Longford, such that appropriate assessment was or is required.

## 6.2. The second test per 177C (2) b)

The applicant states that leave to apply for substitute consent is made on the basis that exceptional circumstances exist which would permit the regularisation of the development, by permitting an application for substitute consent.

The Board must consider the criteria set out under Section 177C (2) b):

### 6.2.1. Whether the regularisation of the development would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?

The legal challenge to the Planning and Development Act 2000 (Exempted Development) Regulations 2019, refers to CJEU judgements where this issue was of concern, and refers in some detail to Case C-215/06 Commission v. Ireland.

74. It is undisputed that, in Ireland, the absence of an environmental impact assessment required by Directive 85/337 as amended can be remedied by obtaining a retention permission which makes it possible, in particular, to leave projects which were not properly authorised undisturbed, provided that the application for such a permission is made before the commencement of enforcement proceedings.

75. The consequence of that possibility, as indeed Ireland recognises, may be that the competent authorities do not take action to suspend or put an end to a project that is within the scope of Directive 85/337 as amended and is being carried out or has already been carried out with no regard to the requirements relating to development consent and to an environmental impact assessment

prior to issue of that development consent, and that they refrain from initiating the enforcement procedure provided for by the PDA, in relation to which Ireland points out that the powers are discretionary.

76. The inadequacy of the enforcement system set up by Ireland is accordingly demonstrated inasmuch as the existence of retention permission deprives it of any effectiveness, and that inadequacy is the direct consequence of the Member State's failure to fulfil its obligations which was found in the course of consideration of the first two pleas in law."

In my opinion the regularisation of the development would circumvent the purposes and objectives of the EIA Directive and/or the Habitats Directive.

6.2.2. Whether the applicant has or could reasonably have had a belief that the development was not unauthorised?

The applicant's submission is that they have carried out the peat harvesting activity either in accordance with the law as a matter of fact, or in the reasonable belief that planning permission was not required for the activity and therefore, could not have been unauthorised until the most recent decision of the High Court which struck down the Government scheme affecting almost the entire Irish commercial peat extraction industry, including KDI.

6.2.3. It seems likely that the Section 5 determinations of the Board (25RL.2969 and 25RL.2975, 15<sup>th</sup> April 2013), which were in relation to peat extraction in north Westmeath, would have been known to the applicant.

It seems likely that the outcome of the judicial review of those Section 5 determinations, 8<sup>th</sup> February 2018, would have been known to the applicant.

A requirement for a licence from the EPA in respect of the extraction of peat in the course of business which involves an area exceeding 50 hectares, has existed since 23<sup>rd</sup> April 1992.

It is stated that the applicant Klasmann-Deilmann Ireland Ltd KDI has operated at Killinagh Rathowen since 1982.

It is also stated that should planning permission be granted, the Applicant will be required to prepare and submit an application to the EPA for an IPPC licence, which will involve additional consultation and opportunities for public participation in the consent process.

The planning authority submission states that the subject development activity does not appear to have been subject to an IPC/IPPC licence from the EPA.

Operations are ongoing on these lands.

The applicant has operated without planning permission since 20<sup>th</sup> September 2012 and without a licence since 23<sup>rd</sup> April 1992 and in my opinion could not reasonably have had a belief that the development was not unauthorised.

- 6.2.4. In relation whether the ability to carry out an EIA or AA and to provide for public participation in such assessments has been substantially impaired,

It is stated that the applicant has operated at this location since 1982. The Board has currently before it two other plots in the area at which the applicant is carrying on peat extraction and is seeking leave to apply for substitute consent. A cursory examination of aerial photography of the north Westmeath / east Longford area reveals the extensive peat extraction activity which has been carried on in this area.

The long duration of the activity and the geographical extent of similar activities significantly limit the ability to carry out an EIA or AA, and in such circumstances also substantially impairs public participation in such assessments.

- 6.2.5. In relation to the question of whether there are actual or likely significant effects on the environment or adverse effects on the integrity of a European site from the carrying out of the development or the continuation of the development:

It is widely accepted that peat extraction generates silt laden run-off. The applicant states that extensive water management infrastructure is in place at the site and will be further expanded to comply with the requirement of the BATNEEC Guidance Note - Extraction of Peat within the proposed IPPC licensed area. The applicant states that the existing drainage infrastructure within the site comprises surface water drains within the boundaries of the site, with settlement of water occurring in 4 no. surface water settlement lagoons prior to outfall to the receiving environment. It appears that no licence is in place and no evidence of the efficacy of the settlement lagoons has been presented.

It is also widely accepted that bogs sequester CO<sub>2</sub> and that peat extraction releases CO<sub>2</sub> into the atmosphere, thereby contributing to climate change.

The SPAs Glen Lough (approx. 2km distance), Lough Iron SPA (approx. 3.5km distance) and Garriskil Bog SPA (approx. 6.5km distance), are all designated for the protection of birds which depend on wetlands: Whooper Swan at Lough Iron SPA and Glen Lough SPA; Greenland white-fronted goose at Lough Iron SPA and Garriskil Bog SPA; and Widgeon, Teal, Shoveller, Coot and Golden Plover at Lough Iron SPA. It is likely therefore that the drainage and extraction of peat from the subject wetland area impacts on the qualifying interests of these protected sites.

In my opinion there are likely to be significant effects on the environment and adverse effects on the integrity of European sites from the continuation of the development.

6.2.6. In relation to the question of compliance with previous planning permissions or previous carrying out of unauthorised development: no planning permission has been sought or obtained for development.

6.2.7. In relation to the question, to what extent significant effects on the environment or adverse effects on a European site can be remediated: the applicant states that they intend to rehabilitate the peatland, post closure. This doesn't appear to refer to remediation of effects on the environment or adverse effects on a European site.

In my opinion significant effects on the environment or adverse effects on a European site cannot be remediated.

6.2.8. In relation to the question of other matters which the Board may consider relevant: both the applicant and the planning authority refer to economic impacts of the activity such as the provision of employment in a rural area where there are few indigenous industries and the applicant refers to its financial contribution to the support of local entities.

While the Board may wish to consider these issues they cannot outweigh the environmental considerations referred to above.

## **7.0 Recommendation**

7.1.1. Having regard to the foregoing I recommend that the Board should not grant leave to apply for substitute consent for the following reasons and considerations.

## 8.0 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 the 20<sup>th</sup> 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 do not exist such that the Board considers it inappropriate 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 circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

the applicant could not 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 been substantially impaired; and

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 not likely be substantially remediated.

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Planning Inspector

22<sup>nd</sup> October 2021

### **Appendices**

Appendix 1 Photographs

Appendix 2 Westmeath County Development Plan 2021-2027

Appendix 4 Site Synopses – sites 004046, 004102 and 004045