



An
Bord
Pleanála

Inspector's Report ABP-310546-21

Question	Whether the industrial extraction of peat is or is not exempted development or is or is not exempted development.
Location	Baltrasna Bog, Mullingar, Co. Westmeath.
Declaration	
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	S5-8-21
Applicant for Declaration	Friends of the Irish Environment
Planning Authority Decision	No declaration
Referral	
Referred by	Westmeath County Council
Owner	Sarah Corcoran
Occupier	Daniel Leonard
Date of Site Inspection	30 th September 2021
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at The Downs, Mullingar Co Westmeath, about 4km east of Mullingar in Baltrasna townland. The site is south of the N4 and the Royal Canal (pNHA site code 002103) and north of the Dublin/Sligo rail line. Referred to in the documentation as comprising approx. 37 ha, it is part of a larger bog at this location known as Baltrasna Bog.
- 1.1.2. A local road, the L5026, which extends from the nearby Downs Interchange on the N4 to the east of the site, runs south of and parallel to the national road, crosses the Royal Canal and runs in a north-south direction east of the site.
- 1.1.3. The access to the site is via a private roadway to the local road. The recently constructed / improved private roadway crosses a recently constructed / improved bridge over a stream, to access the lands.
- 1.1.4. The site drains to the east via the Riverstown River to the River Deel and hence to the River Boyne.
- 1.1.5. Although close to the Royal Canal and the local road, there is relatively limited visibility of the site due to the flatness of the landscape and screening by hedges.

2.0 The Question

- 2.1.1. The question presented is: whether the industrial extraction of peat is or is not development and is or is not exempted development.

Friends of the Irish Environment, in requesting the declaration, have provided a map of an area stated as 37ha. The request includes a two page Westmeath County Council, Section 5 application form, a small scale orthophoto (aerial photograph) with notation, and a photograph.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The planning authority did not issue a declaration and referred the question to the Board.

4.0 Planning History

No planning history, other than the details from the enforcement file, are given for the site.

5.0 Policy Context

5.1. Development Plan

5.1.1. 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.

5.2. Natural Heritage Designations

5.2.1. The nearest protected sites include:

Royal Canal pNHA (site code 002103) c0.4km straight line distance (north) from the subject site.

Wooddown Bog SAC (site code 002205) located less than 2km straight line distance (north) from the subject site.

Lough Ennell SPA (site code 004044) and SAC (site code 000685) located c 4.5km straight line distance (west) from the subject site.

The River Boyne and River Blackwater SAC (site code 002299), located c 9km straight line distance (east) from the subject site, and further downstream to the east.

The River Boyne and River Blackwater SPA (site code 004232), located c 14km straight line distance (east) from the subject site, and further downstream to the east.

6.0 The Referral

6.1. Planning Authority Response

The planning authority have referred the case for the following reasons:

- Legal complexity of the matter, including issues with regard to the application of the EIA provisions including possible retrospective application,
- The altered legal framework over the duration of the use,
- The potential implications of compliance with requirements under the EU Habitats directive (92/43/EEC) for this use, given the potential hydrological links to the Natura 2000 network and the requirement for planning permission including retention permission.

6.1.1. The submission includes: history documents in relation to complaints from the North Westmeath Ranger, National Parks and Wildlife Service, which includes reference to a prosecution and a fine for destroying peatland vegetation during the breeding season at this location; details of land registry folios: a planning report and a warning letter, issued 16th April 2018, which refers to the installation of new drains, the

deepening and widening of existing drains and the excavation of wetlands at Baltrasna Bog.

6.2. Owner/ occupier's response

6.2.1. McCann Fitzgerald Solicitors have responded on behalf of their client, Sarah Corcoran, stated to be the owner. The response includes:

- The documentation is wholly incomplete and does not contain any of the information necessary for the Board to properly answer a question under section 5.
- Under section 127 of the 2000 Act, the referral must state in full the grounds of referral, and the reasons, considerations and arguments on which they are based.
- No information has been provided about:
 - The date of first commencement of peat extraction,
 - What change in use or works if any, have been, or are proposed to be, carried out,
 - Whether there are any material planning impacts from the use of the lands,
 - What has changed from that commenced before 1 October 1964,
 - The area of lands, if any, now extracted,
 - Whether any such extraction is likely to have significant effects on the environment, or
 - Whether the same is likely to have significant effects on any European site.
- Without this information they do not believe the Board can make any proper or lawful decision under section 5 and they invite the Board to dismiss the referral under section 127 for being incomplete and / or under section 138 by reason of the nature of the question raised.

- They rely on the High Court decision in *Heatons v Offaly County Council* (2013) IEHC 261, where the court ruled that a referral was invalid for these reasons. Interested persons are placed at a disadvantage because of such a 'laconic and uninformative' reference.
- They acknowledge that the Board can cure a defective referral, even where the documentation submitted in support of a reference is 'deplorable'. That is what happened in *O'Reilly Bros. (Wicklow) v. An Bord Pleanála* (2006) IEHC 363. However, for the Board to cure a defective referral, it must at least be possible to discover reasons, considerations and arguments from the bundle of documentation submitted. This was possible in *O'Reilly* but not here, given the lack of information provided.
- These issues are particularly sensitive, given the special weight attached to a decision of the Board under section 5 of the 2000 Act.
- They are surprised that Friends of the Irish Environment have not provided the Board with more detail, given their understanding of the complexity of the issues involved, as demonstrated in cases in which they were involved in the recent past, like *Bulrush Horticulture Ltd v An Bord Pleanála & ors*; *Westland Horticulture Ltd & ors v An Bord Pleanála & ors* (2018) IEHC 58 and *Friends of the Irish Environment v Minister for Communications, Climate Action and Environment & ors* (2019) IEHC 685.
- They would be wrong to assume that these judgements answer all of the important questions of law and fact, relevant to Baltrasna Bog. They would be wrong to assume that all peat extraction now requires planning permission.
- The Baltrasna Bog was first drained and cut for peat extraction long before the Local Government (Planning and Development) Act 1963 came into force. As far back as 1910, the Irish Land Commission acknowledged the use of the land for turbarry. Indeed, their client can attest to that activity for at least 64 years, given the time she and her father before her, have been in possession. This use of the land for turbarry was long established, even before turbarry was defined as exempted development under section 4 of the 1963 Act.

- Does the referral mean to question the drains cut or other works carried out before the 1963 Act and 2000 Act applied?
- It is sometimes misunderstood how the continuation of extraction, under a pre 1963 authorisation (as labelled by the Department of Environment, when offering guidance under section 261A of the 2000 Act), is regulated under the 2000 Act. The protection for development commenced before the 1963 Act is preserved within the definitions of unauthorised use and unauthorised works, both matters on which the Board cannot offer a view under section 5. They must reserve their client's rights in relation to same. Without prejudice to their position that the referral should be dismissed; the question of what is or is not allowed to continue from before 1 October 1964 cannot and should not be answered.
- No effort whatsoever has been made to identify the exemptions under previous legislation, within the 1963 Act and regulations made thereunder, or the transitional provisions that allow continued reliance on those exemptions.
- No effort whatsoever has been made to identify material planning impacts from peat extraction on these lands. Their client does not believe there are any.
- No effort whatsoever has been made to identify likely significant effects on any European site. Their client does not believe there are any.
- No meaningful effort has been made to address the 30 hectare threshold, relevant to environmental impact assessment. The aerial photograph includes a label to suggest there is an extraction area of 37 hectares. As a matter of fact, that is wrong. The area for extraction has been carefully maintained below 30 hectares, with all other lands under forestry, rehabilitation or other growth.
- No effort whatsoever has been made to identify likely significant effects on the environment relevant to sub-threshold development. Their client does not believe there are any.
- There is no evidence before the Board that issues related to environmental impact assessment and/or appropriate assessment are engaged in this

matter, so the debate in cases like *Bulrush Horticulture Ltd v An Bord Pleanála & ors*; *Westland Horticulture Ltd & ors v An Bord Pleanála & ors* (2018) IEHC 58 is wholly irrelevant. They do not make the case that Baltrasna Bog is a pipeline project, so excused, by that reason only, from this debate. The case is made that in the absence of the relevant information, that persuaded the court and the Board in those two cases, the Board cannot be expected to make any decision.

6.3. Further Responses

6.3.1. The response made on behalf of the owner was circulated.

6.4. Questioner

6.4.1. A response, on behalf of the party who had raised the question, was made by O'Connell & Clarke Solicitors (recd. 30 September 2021), which includes:

There was sufficient information provided with the question, to the planning authority (PA), to enable them to make a decision. The PA used their discretion to refer the matter to An Bord Pleanála. The Ordnance Survey of Ireland, aerial photography for 1995, 2000, 2005, 2012 and the aerial premium series captured between 2013 and 2018 all available online, and the Water Framework Directive (WFD) mapping available through www.catchments.ie, are referred to. They note from these sources, and from Google maps satellite imagery 2021, by which time the bog had been fully ditched, that, at a date between 2013 and 2018 the present intensified ditching had commenced. The photography from 2005 and 2000 was before ditching had commenced. The EPA's (Environmental Protection Agency) mapping shows that the waterbody closest to the peat extraction site (bounding it) the Riverstown_01 river, a sub-catchment of the Boyne_SC_040, is identified as under significant pressure from peat extraction and at risk of not attaining its WFD objectives. They believe that there is sufficient information before the Board to enable it to form the opinion that an EIA is necessary, regardless of the area involved. It is their position that EIA is mandatory pursuant to Schedule 5 Part II of the Planning and Development Regulations, 2001, as amended, the area being 37 ha. This refers only to the area of high bog that has been closely ditched in recent years. Access roads, drains and

peat storage areas are additional to this area. The trigger relates to 'peat extraction which would involve a new or extended area of 30 hectares'. The peat extraction at Baltrasna Bog very clearly involves an area of 30 hectares or more. If this activity ever was exempted development, which they deny, the requirement for EIA negates any exemption, (Bulrush Horticulture Ltd v An Bord Pleanála (2018) IEHC 58).

The issues raised by McCann Fitzgerald are answered by their own letter. They rely on turbarry rights to claim that peat extraction has occurred prior to 1 January 1964. Turbarry rights for fuel attaches to the land of a dwelling house (see the facts of re Bohan (1957) 1 IR). In the absence of any proof of turbarry within the letter the fact that occupiers of individual dwelling houses may have been granted rights to cut turf for their own dwelling as far back as 1910 is not comparable in any way to the mechanised industrial extraction use, that is the subject of this s.5 reference. It is for the Board to decide if the change of use from the cutting of turf for domestic use under turbarry rights attached to a dwelling, to industrial scale abstraction of peat, is an intensification of use, such that it is development that is subject to the Planning and Development Acts, and not exempted development.

6.5. The Planning Authority

6.5.1. The Planning Authority submitted a response, which includes:

They have submitted all the documentation received by them and request the referral and associated submissions to be duly considered in accordance with legislative provisions, recent high court decisions and matters in respect of Appropriate Assessment and Environmental Impact Assessment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

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.

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

(4) 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 20th September 2012).

(2) The amendment to section 4 of the Act of 2000 effected by *subsection (1)* shall not apply as respects development—

- (a) begun prior to the commencement of this section, and

- (b) completed not later than 12 months after such commencement, unless, immediately before such commencement, the development was being carried on in contravention of the Act of 2000 or regulations under that Act.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

- (b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.”.

7.2. Planning and Development Regulations, 2001, as amended

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.

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.

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

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

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

¹ 14th day of July 2005

(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.

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

Part 2

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.

7.3. Other

7.4. Referrals database

Of the numerous referrals in relation to peat extraction the following are the most relevant:

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.

RL2975 in respect of lands at Lower Coole, Mayne, Ballinealoe & Clonsura, Co. Westmeath owned by Westmeath Peat Ltd. and Cavan Peat Ltd. and occupied by Westland Horticulture Ltd. 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 turbary” was agriculture).

RL2969 a similar determination was made in relation to lands at Camagh Bog, Co. Westmeath, owned by Clover Peat Products Ltd., and occupied by Bulrush Horticulture Ltd.

7.5. Case Law

On a high court challenge to the Section 5 determinations of the Board (25RL.2969 & 25RL.2975, 15th April 2013 (referred to above)) 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 8th February 2018).

8.0 **Assessment**

8.1. The 2000 Act and consequent regulations:

The introduction of the 2000 Act changed the fundamental status of peat extraction under planning law, limited by consequent regulation. The definition of agriculture in section 2 of the 2000 Act omitted the reference to turbarry (previously included in section 2 of the 1963 Act). Material changes of use and works to land are development, and this has included the extraction of peat since section 4 of the 2000 Act came into force on 21st January 2002. However regulations made under section 4(2) provided specific exemptions for the development involved in peat extraction in certain circumstances. Article 6 and Class 17 of part 3 of schedule 2 of the 2001 Planning Regulations provided an exemption for peat extraction in a new or extended area of less than 10ha, or in an area of more than 10ha where the drainage of bogland had commenced before the regulations came into force. A condition was introduced into this class on 14th July 2005 stating that it did not apply if the peat extraction was likely to have significant effects on the environment by reference to the criteria set out in schedule 7 of the regulations. Per Article 9(1)(c), development to which Part 10 of the regulations applied, (ie requiring EIA), was not exempted development under article 6. This removed the exemption under article 6 for peat extraction on a new or extended area of more than 30ha (part 2.2.a of schedule 5 of the regulations). Limited exemption from the requirement to obtain planning permission was provided by regulation, for development that comprised changes of use and works for peat extraction to new land that had not previously been so used.

Ongoing works to extract peat are themselves development. Works to land to extract peat on those lands would require either a grant of permission or an exemption from the need for such a grant.

Article 11 of the 2001 regulations provides exemption for development, by stating that development that was commenced before the coming into force of the

regulations and which was exempted development under the 1963 Act continues to be exempted development, to allow the completion of works that could reasonably be seen as having been contemplated before the general exemption for peat extraction was removed in 2002. This exemption would only apply to the continuation of the type of peat extraction works that had commenced as exempted development until the exhaustion of the peat resources on that land without abandonment or intensification. An intensification of operations or a resumption of abandoned operations that amounted to a material change in the use of the land would not benefit from the exemption provided in article 11 of the 2001 regulations.

The article 11 exemption does not have a limitation with respect to development that would be likely to have significant effects on the environment and so require an EIA.

Further amendments to section 4 of the 2000 Act have sought to reconcile the law on exempted development with the state's obligations under the EIA directive to control and carry out a prior assessment of the impact of projects that are likely to have significant effects on the environment. An amendment to section 4 (section 4 (4)) introduced by the 2010 Act, which stated that no development that required environmental impact assessment or an appropriate assessment was exempted development if it commenced after the said section of the Act came into operation, did not come into force.

Section 4(4) the 2000 Act, inserted under the Environment (Miscellaneous Provisions) 2011, states that development is not exempted development if it requires EIA or an appropriate assessment. (Sub-section 17(2) of the 2011 Act states that the restriction on exemption would not apply to development that commenced before the relevant section of the 2011 Act came into operation (21st September 2011) and was completed not more than 12 months later). This provision affects continuing development that has the benefit of the exemption granted under article 11 of the 2001 regulations. If the development is likely to have significant effects on the environment or on a Natura 2000 site, its exempted status would have ceased on 21st September 2012. Works to extract peat, likely to have such effects and require EIA or AA are not exempted development since 21st September 2012, even if carried out on the same land and in the same manner as peat extraction works that were exempted development before that date.

8.2. Is or is not development

- 8.2.1. The activity being carried out is the industrial extraction of peat.
- 8.2.2. The extraction of peat, being works as well as a material change of use, is development.

8.3. Is or is not exempted development

- 8.3.1. The owner has submitted that in the absence of certain information the Board is not in a position to reach a decision on the referral:

The date of first commencement of peat extraction,

What change in use or works if any, have been, or are proposed to be, carried out,

Whether there are any material planning impacts from the use of the lands,

What has changed from that commenced before 1 October 1964,

The area of lands, if any, now extracted,

Whether any such extraction is likely to have significant effects on the environment, or

Whether the same is likely to have significant effects on any European site.

- 8.3.2. The question before the Board is whether the extraction, which is currently on-going at this site, is or is not exempted development. The Board has before it sufficient information to enable a decision to be made on this question.
- 8.3.3. The area outlined on the map supplied with the referral shows an area, which I have measured (roughly) as comprising of c 39.8ha. The subject area is part of a larger area of bogland at this location. As presented the development exceeds the threshold at which EIA is mandatory.
- 8.3.4. If it were below the mandatory threshold for EIA it would be necessary to consider whether or not the development would be likely to have significant effects on the environment by reference to the criteria set out in Schedule 7, and by that likelihood require environmental impact assessment. There is, in this case, a real likelihood of significant effects on the environment, which would generate a requirement for EIA. Having regard to the nature and scale of the activity, the development is likely to

impact on climate change due to the release of the CO₂, sequestered in the bog, into the atmosphere; the development is likely to impact on surface waters by the release of silt, potentially impacting on protected downstream sites; and being part of a larger area of bog there is potential for cumulative impact with other similar developments in the area; such that the development would require environmental impact assessment.

It is also necessary to consider the need for appropriate assessment. The subject area is upstream of The River Boyne and River Blackwater SPA (site code 004232) and The River Boyne and River Blackwater SAC (site code 002299), which are located some 9-15km straight line distance and further downstream from the subject site. Qualifying interests of both these protected sites rely on maintaining good water quality. As stated in the response on behalf of the questioner, Friends of the Irish Environment, the water quality at the nearest downstream monitoring point on Riverstown river is poor. Peat extraction generates silt laden run-off, which has the potential to impact adversely, via the adjoining watercourse, the water quality of the River Boyne and River Blackwater system downstream and therefore the habitats and species of community interest for which the sites River Boyne and River Blackwater SAC and SPA have been designated including Kingfisher, River Lamprey, Salmon, and Otter. Accordingly appropriate assessment is required.

9.0 Recommendation

9.1. 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 industrial extraction of peat is or is not development or is or is not exempted development:

AND WHEREAS Friends of the Irish Environment requested a declaration on this question from Westmeath County Council and the Council did not issue a declaration.

AND WHEREAS Westmeath County Council referred this question to An Bord Pleanála on the 17th day of June, 2021

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended,
- (b) Section 3 of the Planning and Development Act, 2000,
- (c) Section 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) Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) 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:

- (a) the industrial extraction of peat is development being both works and material change of use of land,
- (b) the industrial extraction of peat is not exempted development because of the location, nature and scale of the works which require both environmental impact assessment and appropriate assessment.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the industrial extraction of peat is development and is not exempted development.

Planning Inspector

2nd December 2021