



An
Bord
Pleanála

Inspector's Report ABP-313515-22

Question

Whether the drainage of wetland (raised bog) and mechanical disturbance, extrusion of peat and removal of turf, of with some of the area is subject to turbary rights is or is not development or is or is not exempted development.

Location

Rathmore, Tullaghanstown, Greetiagh, Herbertstown, and Jamestown, Co. Meath.

Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

KAS52215

Applicant for Declaration

Patrick Moran.

Planning Authority Decision

No declaration

Referral

Referred by

Meath County Council.

Owner/ Occupier

Thomas and Maureen Kerrigan

Vincent Collins

Liam Brady

Date of Site Inspection

14th June 2023

Inspector

Lucy Roche

1.0 Introduction

- 1.1. This is a referral made by Meath County Council, under Section 5(4) of the Planning and Development Act, 2000 (as amended), on foot of a declaration sought by Dr Patrick Moran on the 28th day of March 2022, on the drainage of wetland (raised bog), mechanical disturbance, extrusion of peat and removal of turf, some of the are being subject to turbary, at Jamestown Bog, Co. Meath.

2.0 Site Location and Description

- 2.1. The site, the subject of this referral, as it is identified on the map / plans submitted, comprises a c100ha area of bogland within the townlands of Rathmore, Tullaghanstown, Greetiagh, Herbertstown, and Jamestown in County Meath. The lands are situated c5km east of Athboy and c4.4km west of the M3 at Junction 9.
- 2.2. The referral site is located within and forms part of Jamestown Bog, a designated Natural Heritage Area (Site Code:001324). Jamestown Bog NHA is a raised bog consisting of two flat, elongated lobes, separated by areas of cut-over bog and coniferous forest. The lands, the subject of this referral, comprise the bogs eastern lobe which contains areas of both high bog and cutaway bog. The site is bounded by areas of coniferous forestry and old cutover.
- 2.3. The local road network borders the site to the east, north and south. The main entrance to the bog is located off the county road to the east at a point c1.2km north of its junction with the N51.

3.0 The Question

- 3.1. The question presented is:

Whether the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf, of which some of the area is subject to turbary rights, is or is not development and is or is not exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

The Planning Authority referred the matter directly to the Board without issuing a declaration.

4.2. Planning Authority Reports

4.2.1. Planning Reports

There is no planning report on file.

4.2.2. Other Technical Reports:

None

4.2.3. Prescribed Bodies:

Inland fisheries:

In an e-mail to the planning authority on the 25th of April 2022 state their belief that planning should be required for this development as it poses a threat to the receiving waters of the River Boyne (an SAC) and its tributaries such as the Clady River due to the potential release of ammonia and suspended solids (amongst other pollutants).

Geological Surveys Ireland:

No specific comment or observations to make on this matter.

5.0 Planning History

5.1. Appeal site.

MCC22/899

Permission granted (2023) for development comprising a) the installation of a new gravel pedestrian walkway (circa. 275m length c. 2m wide) east - west linking with existing gravel walkway to the east and terminating at proposed new viewing platform at western end, b) the installation of a new 125m sq. viewing platform comprising timber surround and stone hardcore

finish, for the purposes of providing close up viewpoint of existing raised turf bank and c) provision of bench seating at 2 locations along new walkway.

5.2. ABP Referral Cases:

5.2.1. The following referral cases have been determined by the Board:

ABP-306689-20 The Board decided (2020) that the drainage of wetland habitat (raised bog) and mechanical disturbance, and removal of peat at Corryrouke, Cornakill, Murlagh, County Cavan was development and was not exempted development. This determination was based in part on the need for appropriate assessment. The Board was not satisfied, beyond reasonable scientific doubt, that the subject development would not be likely to have significant effects on the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299)

ABP305340-19: The Board decided that the drainage of wetland (raised bog) and mechanical disturbance, extrusion of peat and removal of turf at Drakerath, Wilkinstown, County Meath was development and was not exempted development. This determination was based in part on the need for Environmental Impact Assessment and Appropriate Assessment.

ABP301243-18 The Board decided that the cutting of small amounts of turf using a sléan within Mouds Bog, candidate Special Area of Conservation to demonstrate how turf is cut by hand to members of the public, at Hawkfield, County Kildare was development and was not exempted development. This determination was based in part on the need for appropriate assessment.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The Meath County Development Plan 2021-2027 (MCDP 2021) is the operative plan. Section 8.11 of the MCDP 2021 relates to Peatlands and states:

The County represents the eastern limit of raised bogs in Ireland and the Council recognises the potential for utilisation of protected areas for tourist, amenity, educational and research purposes. The Council will liaise with the various government and non-government organisations involved in an effort to secure the conservation of the peatland areas having regard to National Peatland Strategy and the National Raised Bog SACs Management Plan 2017-2022. The Council also recognises the potential for some cutaway to facilitate various complimentary activities such the generation of renewable energy, diverse ecosystems and places of public amenity.

It is the policy of the Council:

HER POL 45 To ensure that peatland areas which are designated (or proposed for designation) as NHAs, SACs or SPAs are conserved for their ecological, climate regulation, archaeological, cultural, and educational significance.

It is an objective of the Council:

HER OBJ 39 To work in partnership with relevant stakeholders on a suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment

Screening, as appropriate, having regard to local and residential amenities.

6.2. Natural Heritage Designations

The appeal site is located within and forms part of Jamestown Bog NHA (Site Code:001324). The River Boyne and River Blackwater cSAC, (Site Code 002299), and River Boyne and River Blackwater SPA, (Site Code 004232), are located c6 km, straight line distance, from the subject site.

7.0 The Referral

7.1. Referrer's Case

The referrer, Meath County Council, included with their submission a copy of the application form for a declaration on development and exempted development which was received by them from Dr Patrick Moran on the 28th of March 2022. The information contained in this document can be summarised as follows:

- Patrick Moran, in requesting the declaration, provided a map and aerial photographs which he states illustrate potential unauthorised development, including drainage of a wetland habitat (total area in excess of 100ha) where in excess of 2ha of wetland habitat is being affected. The submission references Class 1(c) Part 2, Schedule 5 of the Planning and Development Regulations 2001 (as amended) [development which requires environmental impact assessment]
- This is a wetland site of high biodiversity value that is being drained and from which peat is being extracted by numerous persons / contractors every year.
- The Annex II – listed marsh fritillary butterfly has been recorded breeding at the site last year.
- This development and similar developments nationwide are contributing to the climate and biodiversity emergency declared by the government. This activity

is having a significant impact on the environment. Even if considered sub-threshold, the impact on the environment of the development should require at a minimum EIA screening in accordance with the planning and development regulations (as amended) 2001.

- This activity takes place adjacent to a source-pathway-receptor linkage between the development site and the River Boyne and River Blackwater SAC/SPA.
- Much of the area in question is subject to the right of Turbary, A turbary right comprises what is termed “profit a prendre”. In Irish law, the holder of a *profit a prendre* can bring action in trespass for infringement of the right, on the basis that its enjoyment carries a possessory right. In failing to enforce the cessation of the extraction of peat by a contractor within turbary plots, Meath County Council may be considered to have failed to protect the rights of the holder of the profit a prendre – leaving Meath County Council vulnerable to an action in trespass for infringement of the right, on the basis that its enjoyment carries a possessory right.

7.2. Owner/ occupier’s response.

7.2.1. Based on the information contained within this file there are 3 no. third-party landowners. They are:

- Thomas and Maureen Kerrigan of Milltown, Cortown, Kells, Co Meath
- Vincent Collins of Durhamstown, Bohermeen, Navan, County Meath
- Liam Brady of Allenstown, Kells, County Meath

7.2.2. The Board in accordance with Section 129 of the Planning and Development Act, 2000, as amended, provided each of the three landowners with a written notification of this referral case and an opportunity to make comment.

7.2.3. A response was received from Liam Brady of Allenstown, Kells, County Meath. This submission can be summarised as follows:

- The vast majority of the documentation received appears relates to similar referrals made by Dr Moran on other bogs of which Mr. Brady has no knowledge, and which have no connection to his land.
- It appears that Dr Moran is making his referral in an environmental capacity and not as a result of ownership rights or personal connection to Jamestown Bog.
- No development of any kind is taking place on the lands indicated. The entirety of these lands in three folios, is cut away bog land and is not being utilised for any type of development including extrusion of peat and removal of turf.
- These lands are subject to turbary rights – there is no trespass or infringement of Mr. Brady’s rights taking place on his lands.
- There are a number of plots on the bog where peat is being extracted by local owners as a source of fuel. It may have been more prudent to direct this correspondence to these individuals as opposed to the folio owners.
- Plots were originally assigned to individual homeowners and when a house is sold the ownership of the plot automatically transfers to the new homeowner. This ensures that plots are utilised for domestic turf cutting only and not for commercial use.
- All of the plot owners possess turbary rights and grant local contractors access in order to cut individual banks for domestic use.
- The cutting of turf for use of local householders is an essential right.
- The Bohermeen Bog Development Group was formed a number of years ago with the aim of removing illegal dumping, the regulation of turf cutting to ensure no commercial cutting takes place, the deterrent of illegal encampments and the provision of a walkway as a local amenity.
- The sighting of the Marsh Fritillary Butterfly as referenced in the correspondence is as a direct result of the work carried out.
- It is the contention of Mr. Brady that the continued annual improvements to the bog, which have greatly enhanced the environment and local bio-diversity,

will be beneficial to all. These benefits which would not be possible without the works of local turf cutters significantly outweigh the limited environmental impact caused by small scale domestic turf cutting that exists.

- The turf cutting on this site does not constitute development it is simply a means for local people to obtain a source of heat and one which was originally undertaken by manual labour but has now been simplified by use of machinery.
- No evidence has been proffered to sustain the argument that Meath County Council failed to protect turbary rights. No trespass of any lands in contravention of these rights is being committed and all relevant stakeholders with regard to turbary rights are consulted prior to the domestic cutting of turf for local plot holders.

7.3. Further Responses

- None

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000 (as amended)

8.1.1. Section 2(1) Interpretation – defines the terms used within the Act including:

“Works”	Includes any act or operation of construction, excavation, demolition, extension, alteration, repair, renewal”. Structure is defined as “any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined and where the context so admits, includes the land on, in or under which the structure is situate.
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8.1.2. Section 3(1) defines development as follows:

“*Development*” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

8.1.3. Section 4 (1) identifies what may be considered as exempted development for the purposes of the Act,

8.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001 (as amended).

8.1.5. Section 4 (4) states as follows: Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required, (enacted 20 Sept 2012).

8.2. **Planning and Development Regulations, 2001 (as amended)**

8.2.1. Article 6(1) refers to Exempted Development. 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.

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

(1) (a) if the carrying out of such development would: -

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

(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.

(1)(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

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

Land Reclamation

CLASS 11 Development consisting of the carrying out of drainage and/or reclamation of wetlands:

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

Note: Wetlands are defined in Article 5 the Regulations as 'natural or artificial areas where biogeochemical functions notably depend on constant or periodic inundation, or saturation, by standing or flowing fresh, brackish or saline water'.

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 Regulations.

8.2.4. **Environmental Impact Assessment.** Section 172 of the Act requires environmental impact assessment (EIA) for development which would be of a class specified in Part 1 or Part 2 of Schedule 5 of the Regulations where the development is equal to or exceeds the limit specified in the Schedule, or where the development is sub-threshold and is likely to have significant environmental effects.

- Class 1(c), Part 2 of Schedule 5 requires environmental impact assessment for development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.
- Class 2(g) requires environmental impact assessment for peat extraction which would involve a new or extended area of 30 hectares or more.

Schedule 7 of the Regulations sets out criteria for determining whether the development listed in Part 2 of Schedule 5 should be subject to EIA.

8.2.5. **Appropriate Assessment.** Section 177S of the Act requires that a competent authority take appropriate steps to avoid in a European site the deterioration of natural habitats and the habitats of species for which the site has been designated and, under section 177N, may only grant consent having determined that a proposed development shall not adversely affect the integrity of a European site.

9.0 Regulatory Framework

9.1. The following provides a summary, as I see it, of the regulatory framework applying to peat extraction.

9.2. Section 4(1)(a) of the 1963 Act provided an exemption for the use of land for agriculture. The definition of agriculture in Section 2 of the 1963 Act explicitly included use as turbary (i.e., the right to cut turf, or peat, for fuel on a particular area of bog), therefore use as turbary was exempted development. The definition of agriculture in Section 2 of the 2000 Act omitted the reference to turbary that had been included in section 2 of the 1963 Act. Therefore, the exemption for use as turbary that applied under section 4(1)(a) of the 1963 act was not repeated under section 4(1)(a) of the 2000 act.

- 9.3. 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 by the Minister under Section 4(2) did provide specific exemptions for the development involved in peat extraction in certain circumstances (Article 6 and then Class 17 of part 3 of schedule 2 of the 2001 planning regulations).
- 9.4. Per Article 9(1)(c), development to which Part 10 (EIA) of the regulations applied, 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).
- 9.5. 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, this would allow the completion of works that could be reasonably seen as having been contemplated before the general exemption for peat extraction was removed in 2002. There was no limitation on the operation of Article 11 with respect to development that would be likely to have significant effects on the environment and so require an EIA.
- 9.6. 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, the Birds Directive, and the Habitats Directive. The 2010 Act introduced an amendment with a Section 4(4) that 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. Under the Environment (Miscellaneous Provisions) 2011, Section 4(4) was inserted into the 2000 Act. It states that development is not exempted development if it requires EIA or an Appropriate Assessment. Sub-section 17(2) of the 2011 Act stated that this new restriction on exemption would not apply to development that commenced before the relevant Section of the 2011 Act came into operation (that date was 21st September 2011) and was completed not more than 12 months later. If the development is likely to have significant effects on the environment or on a Natura 2000 site, then its exempted status would have ceased on 21st September 2012. Works to extract peat that would be likely to have such effects and require EIA

or AA were not exempted development post 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.

10.0 **Assessment**

10.1. **Introduction**

- 10.1.1. The question arises as to whether the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf, of which some of the area is subject to turbary rights, is or is not development and is or is not exempted development.
- 10.1.2. It should be noted from the outset that the purpose of this referral is not to determine the acceptability or otherwise of the drainage of wetland (raised bog), the mechanical disturbance or the extraction of peat & removal of turf etc in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development
- 10.1.3. On the issue of turbary (the right to cut turf, or peat, for fuel on a particular area of bog) as raised by Dr Patrick Moran in his submission to Meath County Council on the 28th of March 2022, I consider any trespass or infringement of such rights to be a civil matter between parties and that such matters would fall outside the scope of the Section 5 referral.

10.2. **Is or is not development:**

- 10.2.1. Section 3 of the Planning and Development Act, 2000, as amended, defines 'development' as the '*carrying out of any works on, in, over or under land, or the making of any material change in the use of any structures or other land*'. Having regard to Section 2 of the Act wherein 'works' are defined as including '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*.'

10.2.2. The Board has previously determined that ongoing works to extract peat is development. Accordingly, it is necessary to ascertain whether the development is or is not exempted development.

10.3. Is or is not exempted development:

10.3.1. Development can be exempted from the requirement for planning permission by virtue of either (a) Section 4 of the Planning and Development Act 2000 (as amended) or (b) Article 6 of the Planning and Development Regulations 2001 (as amended). I have had regard to Section 4(1) of the Act, and I am satisfied that the exemptions provided in this section are not relevant to this case.

10.3.2. Article 6 of the Regulations provides that development of a Class specified in Schedule 2 shall be exempted development provided that the conditions and limitations attached to those various Classes are met. Schedule 2, Part 3 of the Regulations includes an exemption for both Land Reclamation (Class 11) and Peat Extraction (Class 17).

10.3.3. Class 11 Land Reclamation provides an exemption for development consisting of the carrying out of drainage and/or reclamation of wetlands. The identified site is a bog and is therefore a wetland area. However, it would appear to me that the primary intention of the development carried out on site, including the drainage of land, is to facilitate the harvesting of peat rather than land reclamation, therefore I consider Class 17 Peat Extraction to be the appropriate class against which to determine whether the development in question is exempted development. Class 17 provides an exemption for:

(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 Regulations.

10.3.4. It is evident from the information on file and from site inspection that peat is being extracted from the subject site. Aerial photography (orthophotos) for the area is available on the Ordnance Survey Ireland website, osi.ie. The imagery available which extends from 1995 to post 2013 (2013-2018), provides an indication of the

area where drainage works, and peat extraction has taken place over that time. To me, the imagery suggests that there has been limited drainage of the centre of the site and that the drainage work being carried out is from the edges, as peat harvesting progresses inwards. While the imagery shows the progression of peat extraction over the years, it is difficult to ascertain the area within which new drainage works and peat extraction have taken place since the coming into force of the regulations. A more detailed examination including survey works would be required to determine same. However, it would appear to me that the area within which drainage works, and peat extraction have taken place, within the identified site, since 2005, is less than 10 hectares and would therefore be within the limit of the exemption under Class 17.

10.4. Restrictions on Exempted Development

Article 9

- 10.4.1. Article 9(1) of the planning and Development Regulations 2001 (as amended) provides a number of scenarios whereby development to which Article 6 relates shall not be exempted development for the purposes of the Act, including, if the carrying out of such development would (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.
- 10.4.2. The referral site forms part of Jamestown Bog Natural Heritage Area HA (Site Code: 001324). The site synopsis provided by the NPWS describes Jamestown Bog NHA as *'a site of considerable conservation significance comprising as it does a raised bog, a rare habitat in the E.U. and one that is becoming increasingly scarce and under threat in Ireland. Its location makes it especially important as it is representative of the north-eastern extreme of the geographic range of raised bogs in Ireland'*.
- 10.4.3. I note from the documentation presented with the referral that the Marsh Fritillary *Euphydryas Aurinia*, an Annex II species, has been recorded on site.
- 10.4.4. The NPWS further states that the activities carried out on site, which include reference to intensive peat cutting and drainage, have resulted in a loss of habitat

and damage to the hydrological status of the site, and pose a continuing threat to its viability. In this context, I consider that the restriction on exemptions under Article 9 (1) (a) (viiC) of the Planning and Development Regulations, 2001 (as amended) is applicable in this instance.

Environmental Impact Assessment

- 10.4.5. With regard to the requirement for environmental impact assessment (EIA), the Regulations require EIA for the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetland would be affected (Class 1(c)) and where peat extraction would be 30ha or more (Class 2(g)). While the subject development does involve the drainage of wetland, the main purpose of the drainage works is to facilitate the harvesting of peat. As peat extraction, which would include the drainage of peatland, is listed as a separation class of development in Schedule 5, I consider it to be the more appropriate Class against which to consider the development.
- 10.4.6. The subject development would be sub-threshold for mandatory EIA. Schedule 7 of the Regulation set out criteria for determining whether development listed in Part 2 of Schedule 5 should be subject to EIA. This includes under 'characteristics of the development', the cumulation with other existing development, the use of natural resources, and pollution and under 'location of the proposed development', the sensitivity of the geographical area likely to be affected having regard to the existing land use, the relative abundance, availability, quality, and regenerative capacity of the natural resources in the area and the absorptive capacity of the natural environment paying particular attention to wetlands (amongst other things).
- 10.4.7. The referral site is located within and forms part of Jamestown Bog a designated NHA. The site is described (NPWS Site Synopsis) as being of considerable conservation significance comprising as it does a raised bog, a rare habitat in the E.U. and one that is becoming increasingly scarce and under threat in Ireland. Peatland also acts an important carbon sink. The development involves the extraction of a natural response, peat, which is not renewable to any significant degree. The extraction of peat has the potential to give rise to pollution arising from the release of carbon dioxide into the atmosphere, and ammonia and suspended solids etc to water. It is noted that the subject site would appear to drain to the River

Boyne and River Blackwater SAC, and SPA. Loss of habitat also results. The impacts of peat extraction would be cumulative with the other large peat extraction areas in proximity and in the same drainage basin. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.

Appropriate Assessment:

- 10.4.8. Under the terms of the Planning and Development Act, the Board is precluded from granting permission for a development where there is a risk of an adverse effect on the integrity of a European site. In this instance the subject site would appear to drain to the River Boyne and River Blackwater SAC, and SPA. These protected sites have water dependent habitats and species. The main impacts on water quality and river habitat arising from peat extraction and drainage include the release of ammonium and fine-grained suspended sediments, and physical alteration of aquatic habitats. While adverse effects on the integrity of the sites is unlikely, due to the separation distances involved, in excess of 6km straight line distance, there is no scientific evidence on file to support this conclusion. Regard is had to the comments of the Inland Fisheries in their submission to the Meath County Council on the 25th of April 2022 in which they state their belief that this development poses a threat to the receiving waters of the River Boyne (an SAC) and its tributaries such as the Clady River due to the potential release of ammonia and suspended solids (amongst other pollutants).
- 10.4.9. In my opinion, having regard to the nature of the development and the known impact of drainage of peatland on river systems, it cannot be excluded on the basis of the information available that the development would not impact on these Natura sites, notwithstanding the distance they are removed from the subject site, and therefore Appropriate Assessment is required for the drainage, mechanical disturbance, extrusion of peat and removal of turf from this site.

11.0 Recommendation

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

WHEREAS a question has arisen as to whether *the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf, of which some of the area is subject to turbary rights, is or is not development and is or is not exempted development*

AND WHEREAS Patrick Moran requested a declaration on this question from Meath Council.

AND WHEREAS Meath County Council referred this declaration for review to An Bord Pleanála on the 9th day of May 2022:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1) and Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Part 2 of Schedule 5 to the Planning and Development Regulations, 2001, as amended,
- (g) Schedule 7 to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat and removal of turf is development.
- (b) The drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf at this location is not exempted development, having regard to the sensitivity of the site, the location of the site within Jamestown Bog a designated natural heritage area, and the impact of such development on the NHA by way of loss of habitat and damage to the hydrological status of the site; the cumulative impact of such development taken together with similar development in the area, which would require environmental impact assessment; and the drainage outflow to the River Boyne and River Blackwater SPA and cSAC, which having regard to the potential impact on these Natura sites, requires appropriate assessment.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the drainage of wetland (raised bog), the mechanical disturbance, extrusion of peat & removal of turf, of which some of the area is subject to turbary rights, is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Lucy Roche
Planning Inspector

27th July 2023