

Abi Delaney

From: Appeals2
Sent: Monday, February 9, 2026 9:09 AM
To: Abi Delaney
Subject: FW: Further Submission – Case Ref. ACP-323676-25 – Substitute Consent under Section 177E
Attachments: ACP-323676-25_Further-Submission_Ownership_LD.docx

From: Laura Finnegan <lrafnnngn@yahoo.co.uk>
Sent: Saturday, February 7, 2026 2:06 PM
To: Appeals2 <appeals@pleanala.ie>; scsubmissions@pleanala.ie; Bord <bord@pleanala.ie>
Subject: Further Submission – Case Ref. ACP-323676-25 – Substitute Consent under Section 177E

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Dear Sir / Madam,

I refer to your correspondence dated 30 January 2026 in respect of Case Ref. ACP-323676-25, concerning an application for Substitute Consent under the provisions of Section 177E of the Planning and Development Act 2000 (as amended) for peat extraction and ancillary works at Lemanaghan Bog, located in the townlands of Cooldorragh, Kilnagarnagh, Cappalossest, Tumbleagh, Killaghintober, Castlearmstrong, Leabeg, Cornafurish and Corrabeg, Lemanaghan, Kilnagoony, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh, Cor Mor and Cor Beg, and Corbane, Co. Offaly.

In accordance with that correspondence, I hereby make a further submission. This submission is confined solely to matters arising from the applicant's submission as enclosed with your letter.

Please find attached **ACP-323676-25_Further-Submission_Ownership_LD.pdf**.

Yours faithfully,

Laura Dunne


Laura Dunne

Back Road,
Ballycumber,
Co. Offaly.
R35XV84

07/02/2026

An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Re: Case Ref. ACP-323676-25

Substitute Consent under the provisions of Section 177E of the Planning and Development Act 2000 (as amended) for peat extraction and ancillary works at Lemanaghan Bog, Co. Offaly, in the townlands of Cooldorragh, Kilnagarnagh, Cappalossest, Tumbleagh, Killaghintoher, Castlearmstrong, Leabeg, Cornafurish and Corrabeg, Lemanaghan, Kilnagoony, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh, Cor Mor and Cor Ber, and Corbane, Co. Offaly

Dear Sir / Madam,

I make the following further submission in response to the applicant's submission as enclosed and circulated by An Coimisiún Pleanála in correspondence dated 30 January 2026, in connection with the above-referenced application for Substitute Consent under the provisions of Section 177E of the Planning and Development Act 2000 (as amended). This submission is confined solely to matters arising from that enclosed material.

Grounds relating to the Applicant's Ownership Submission

1. Ownership has been relied upon by the applicant as a material factual claim but has not been evidenced

An Coimisiún Pleanála requested the submission of a Landowner Letter of Consent as a procedural step for the purposes of processing the application. In responding to that procedural request, the applicant did not merely confirm consent to apply, but expressly asserted that Bord na Móna Energy Ltd. is the freehold and beneficial owner of the lands delineated by the red-line boundary and relied on that assertion in support of its position. While proof of ownership is not generally required for planning purposes, once the applicant relies on ownership in this manner to support its case, ownership ceases to be a purely procedural matter and becomes a substantive factual claim for the purposes of administrative assessment.

As a material factual claim relied upon in administrative decision-making, ownership must meet a minimum standard of evidential certainty if it is to carry weight in the Board's assessment. No documentary proof of legal title has been furnished. No Land Registry folio numbers, deeds, or other title documentation demonstrating ownership have been provided, nor has ownership at the time the unauthorised works were carried out been established. In these circumstances, the ownership assertion remains unsupported and cannot be treated as a determinative or resolving factor in the assessment of substitute consent under Section 177E.

2. Turbary rights recognised in Irish law further undermine reliance on ownership as a determinative fact.

Irish law recognises turbary rights as a distinct proprietary interest, separate from freehold ownership, constituting a form of profit à prendre capable of subsisting independently of ownership. The legal status of turbary rights as a separate interest in land has long been recognised by the Irish courts, which have consistently treated such rights as capable of

burdening land notwithstanding clear freehold title (see, for example, *Whelan v Madigan* [2008] IEHC 189).

The continued statutory recognition of turbary rights is reflected in the *Turf Development Acts 1946–1998*, which expressly provide for the compulsory acquisition and extinguishment of turbary rights by Bord na Móna, with compensation. This statutory framework confirms that turbary rights are not displaced by ownership alone and that ownership of peatland does not necessarily equate to exclusive control over peat resources or authority to extract peat.

While it is acknowledged that industrial-scale peat extraction cannot lawfully rely on turbary rights, the relevance of turbary rights in the present context is not one of authorisation, but of legal certainty and control. The existence of turbary rights does not imply that consent from turbary rights holders was required for planning purposes, but it does demonstrate that ownership alone cannot be assumed to establish exclusive control or authority in relation to peatlands.

Their recognised existence in Irish law demonstrates that ownership assertions, without clarification of the status of any turbary rights or other encumbrances affecting the lands, cannot be treated as resolving questions of authority, control, or responsibility for peat extraction works.

In the context of an application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended), where the Board is required to assess the lawfulness of unauthorised development at the time it occurred and to exercise an exceptional retrospective jurisdiction, reliance on an unsupported assertion of ownership — without clarity as to the status of turbary rights or other legal interests — cannot provide the degree of legal certainty required.

3. The inclusion of public infrastructure within the red-line boundary undermines the legal certainty of the ownership claim

The red-line boundary relied upon by the applicant does not exclude public roads, rail lines, or associated transport infrastructure, but instead includes such lands within the area over which freehold and beneficial ownership is asserted. In planning practice, a red-line boundary is intended to clearly identify the lands to which an application relates and over which an applicant claims sufficient control or interest. Where the boundary includes lands that are not ordinarily capable of private ownership, and no distinction or qualification is provided, the precision and reliability of the ownership claim is undermined.

In such circumstances, it is unclear whether the applicant is asserting ownership over lands that are ordinarily vested in public authorities or statutory undertakings, or whether the red-line boundary is simply over-inclusive and imprecise. Either interpretation introduces uncertainty into a fact upon which the applicant relies. Where ownership is advanced as a material factual claim in support of an application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended), such lack of precision means that the ownership assertion cannot safely be treated as a determinative or resolving factor in the Board's assessment.

4. Ownership does not remove the requirement for planning permission

Even if ownership were established, ownership of land does not exempt a developer from the requirement to obtain planning permission. Section 3 of the Planning and Development Act 2000 defines development by reference to the nature of the activity undertaken, rather than land ownership. Industrial-scale peat extraction constitutes development requiring prior planning permission irrespective of who owns the land.

5. Ownership does not remove the requirement for prior environmental assessment

The obligation to carry out Environmental Impact Assessment under Directive 2011/92/EU (as amended) and, where applicable, Appropriate Assessment under Directive 92/43/EEC applies regardless of land ownership or public-body status. EU environmental law requires

that such assessments be undertaken prior to the granting of consent and prior to the carrying out of works, and that development is not permitted to proceed in the absence of such prior assessment.

6. Ownership cannot retrospectively legitimise unauthorised development under Section 177E

Substitute consent under Section 177E is an exceptional procedure and cannot be used to regularise development carried out without consent in circumstances where prior environmental assessment was required. Section 177E does not permit the retrospective validation of development that ought to have been subject to Environmental Impact Assessment or Appropriate Assessment prior to the carrying out of works. This reflects the preventive purpose of EU environmental law, as confirmed by the Irish courts in *Sweetman v An Bord Pleanála* [2017] IESC 46.

7. Retrospective environmental assessment remains fundamentally deficient

The assertion of ownership does nothing to remedy the deficiencies inherent in retrospective environmental assessment. The Court of Justice of the European Union has confirmed that post-hoc assessment cannot compensate for the absence of prior environmental assessment or for the loss of baseline environmental conditions, which are irretrievable once works have been carried out (including *Commission v Ireland* C-215/06).

8. Assertion of ownership reinforces responsibility for the unauthorised works

By asserting ownership and control of the lands, despite not having established ownership either at present or at the time the unauthorised works were carried out, the applicant reinforces its responsibility for the carrying out of those works and for the resulting environmental and cultural heritage impacts. Reliance on ownership in this manner does not

assist the applicant in meeting the strict legal threshold required for the grant of substitute consent under Section 177E.

Summary

The applicant has relied on ownership as a material factual claim without establishing that claim to the degree of evidential certainty required in an exceptional substitute consent process. Ownership has not been demonstrated either at present or at the time the unauthorised works were carried out. In circumstances where ownership is relied upon to support the applicant's position, such reliance cannot be treated as determinative in the absence of clear and verifiable evidence.

The reliability of the ownership claim is further undermined by the fact that the red-line boundary includes public roads, rail lines, and associated infrastructure without distinction or qualification, introducing uncertainty as to the extent of the lands over which ownership or control is asserted.

Irish law further recognises turbary rights as a distinct proprietary interest capable of subsisting independently of freehold ownership, underscoring the complexity of land tenure in peatland contexts and reinforcing why ownership alone cannot be assumed to resolve questions of control, authority, or responsibility. Ownership does not remove the requirement for planning permission, nor does it displace the obligation to carry out Environmental Impact Assessment or Appropriate Assessment in advance of development.

Section 177E does not permit the retrospective legitimisation of unauthorised development carried out in circumstances where prior environmental assessment was required, and retrospective assessment cannot cure the absence of such prior assessment or the loss of baseline environmental conditions. The applicant's assertion of ownership, particularly where ownership has not been established either now or at the time of the unauthorised works, serves only to reinforce responsibility for that development and does not assist in meeting the strict legal threshold required for the grant of substitute consent. Accordingly, the

applicant's submission fails to address the core legal deficiencies of the application, and substitute consent must be refused.

Yours faithfully,

Laura Dunne

Abi Delaney

From: Appeals2
Sent: Monday, February 9, 2026 9:16 AM
To: Catherine Flynn
Cc: Abi Delaney
Subject: FW: Further Submission – Case Ref. ACP-323676-25 – Substitute Consent under Section 177E
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From: Communications <communications@pleanala.ie>
Sent: Monday, February 9, 2026 8:47 AM
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: Further Submission – Case Ref. ACP-323676-25 – Substitute Consent under Section 177E

From: Laura Finnegan <lrafnngn@yahoo.co.uk>
Sent: Saturday 7 February 2026 14:06
To: Appeals2 <appeals@pleanala.ie>; scsubmissions@pleanala.ie; Bord <bord@pleanala.ie>
Subject: Further Submission – Case Ref. ACP-323676-25 – Substitute Consent under Section 177E

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