



Sonya Smith
Environmental protection Agency
Environmental Licensing
PO box 3000
Johnstown Castle Estate
County Wexford

Reg No : P0914-01

Dear Sonya

In response to the EPA letter of 20th May from John McEntaggart and previous correspondence refers.

In relation to your request that we *...Submit confirmation from the relevant planning authority that the activity has full planning permission or is an exempt development*, I regret that I am unable to do so at this time.

I met, just this week, with Mr Terry Mc Cague, Senior Planner with Westmeath County Council, and Ms Yvonne Haughey, Regional Planner for the Coole area, Westmeath County Council in the company of Mr Ciaran Murray, a representative of Cavan Peat, our Landlord.

We explained to Mr Mc Cague and Ms Haughey that we required a letter from Westmeath County Council, confirming that the activity engaged in on the lands at Coole, Mayne and Clonsura, the subject of our IPPC Licence application were exempted development.

Mr Mc Cague stated that he was not in a position to issue such a letter. He explained that there is a Section 5 planning application pending on lands adjacent to those occupied by Westland Horticulture. This application had been referred by Westmeath County Council to An Bord Pleanala for a determination. An Bord Pleanala had yet to issue their decision. Mr Mc Cague further explained that this pending decision by An Bord Pleanala could have implications for the lands occupied by Westland Horticulture.

We asked Mr Mc Cague if he could confirm this to us in writing. Mr Mc Cague felt that this would be inappropriate as the case was still pending. However, Mr Mc Cague suggested that if the EPA (as a statutory body) were to write to Westmeath County Council directly in relation to the planning status of the activities carried out by Westland Horticulture on the lands in question that Westmeath County Council would respond directly to the EPA.



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The address for such correspondence is :

Mr Terry Mc Cague,
Senior Planner,
Westmeath County Council,
County Buildings,
Mullingar,
Co. Westmeath.

In relation to your request, as to whether or not the activity requires an EIS, this is dependent on the pending Section 5 application.

Mr Murray re-iterated the current position in relation to the planning status as far as Cavan Peat as owners of the bogland, and landlords to Westland Horticulture were concerned. The peat harvesting activities at the lands in Mayne, Ballinaloe and Clonsura are an exempt activity for planning purposes, as the activity had commenced prior to the coming into force of the 1963 Planning Acts.

For your information, I enclose a copy letter which I received from J.V. Kelly and Co., Solicitors, confirming the legal argument in relation to these activities..

I trust that you will contact Mr Mc Cague directly in relation to the planning query.

I would also like to point out that in relation to the completion of an Environmental Impact Statement that Westland have never been requested to complete and EIS by the local planning authority as this is linked to Planning permission.

I would like to point out that Westland are willing to complete an Environmental Impact Statement if requested.

Should you require any further information, or clarification in relation to the enclosed, please do not hesitate to contact me.



Mark Hamill.

PAUL V. KELLY B.C.L.
ATTORNEY AT LAW OF THE
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OUR REF
2/C194B/2/AD/JL

YOUR REF.

DATE:
12th July 2011

Mr Mark Hamil
Quality Systems Manager
Westland Horticulture Limited
14 Granville Industrial Estate,
Granville Road,
County Tyrone
BT70 1NJ

RE: IPPC LICENCE APPLICATION
EPA REFERENCE NO: P0914-01

Dear Mark,

We refer to the request from the Environmental Protection Agency of the 20th May 2011, where it seeks either confirmation from the planning authority that the activity has full planning permission or confirmation that the development is an exempted development for the purposes of the Planning and Development Acts and Regulations made thereunder.

Insofar as the Planning and Development Acts and compliance with such legislation is concerned, the critical date in respect of this legislation is the 1st October 1964.

Prior to that time there was no planning system in existence within this jurisdiction and one was free to carry out developments without regard to the statutory controls that now exist under that legislation. Of course there were other controls which protected the environment and protected other land users but there were no formal planning controls in existence until the enactment of the Local Government (Planning and Development) Act of 1963. The operative date for this legislation was the 1st October 1964.

Any activities of a type covered by the legislation which were in being at that stage were considered to be established activities and could operate without the need for any authorization under the Planning and Development Acts or its predecessor the Local Government (Planning and Development) Act 1963.

This arises pursuant to Section 24 of the Local Government (Planning and Development) Act of 1963.

This set out the circumstances in which planning permission was required and expressly provides at Section 24(1) "*Subject to the provisions of this Act, permission shall be required under the part of this Act – (a) in respect of any development of land being either exempted development nor development commenced before the appointed day.....*". In those circumstances, once an activity or a development had commenced before the 1st October 1964 and expressly in accordance with Section 24 of the Local Government (Planning and Development) Act 1963, no permission was required in respect of it. The aforesaid development was in the nature of an established activity and could continue as of right without any permission or without being subject to the Planning Acts then introduced.

Indeed Section 40 of the Local Government (Planning and Development) Act 1963 provided that in the case of land which was being used temporarily for a purpose for which it was not normally used, the resumption of the normal use would not require planning permission either.

The activity the subject matter of the request from the Agency falls under the category identified in Section 24(1).

The land has been used for the extraction of peat since time immemorial and there is no doubt that this was an existing established use on the 1st October 1964. These lands were always subject to turbary rights and indeed peat has always been extracted on these lands. At no time were these lands areas of virgin peat. This was the existing established use of these lands at the 1st October 1964 because at that date the lands had no other use and therefore come within the terms of Section 24 as aforesaid.

For the purposes of certainty in respect of this, we enclose an affidavit from Mr. Paddy Hill, Clonsura, Castletown, Finea, Mullingar. He has set out on affidavit the manner in which these lands were used going back to 1943 and verifies the use and works on the lands on the appointed day i.e. the 1st October 1964. These particular lands, there can be no doubt, had a use much intensive in terms of peat extraction than might be the case in respect of other lands. It is well established that Westmeath County Council acquired the right to extract peat from the lands, commencing during the Second World War, and as Mr. Hill points out this extraction continued during the 1950s and there is no doubt that on the 1st October 1964, having regard to Section 24 and Section 40, that the use for peat extraction had been established and such peat extraction was development for the purposes of the Planning Acts and that as such planning permission was not required for the continuance of this activity.

In formal terms therefore, the answer to the request referred to in the Agency's letter of the 20th May 2011 is that the activity is not amenable to the provisions of the Planning Acts as the activity commenced before the appointed day, i.e. the 1st October 1964, and has continued thereafter. Given therefore that the activity did not require planning permission the issue of whether the activity has full planning permission or not is not relevant. Equally, given that the development is an established

activity, there is no need to inquire as to whether the development is or is not an exempted development.

In requesting confirmation from the relevant planning authority therefore, their jurisdiction is limited to questions as to whether the activity is development and/or exempted development. The issue in this case does not easily fit into either category because it is an established use which had commenced before the appointed day and therefore is lawfully entitled to proceed. What is clear however, beyond any doubt, is that this is a lawful activity for the purposes of the Planning Act and no issue in respect of the Planning Acts arises in respect of the continued activity.

While it is unnecessary to deal with the matter, it is well established that if peat extraction had not commenced on the site before the 1st October 1964, then even if it had commenced thereafter it would have been exempted development. This arises from the statutory exemption contained in Section 4(1)(a) that provides the use of land for the purposes of agriculture and forestry to be exempted development. Agriculture as referred to in Section 4(1)(a) is defined at Section 2 of the 1963 Act as including the use of land for turbarry. Turbarry is defined as the extraction of peat and consequently this activity would in any event be exempted development. The same provisions apply in the Planning and Development Act 2000 but it cannot be emphasised strongly enough that exempted development has no application to a use which commenced before the appointed day and continued thereafter.

Because the Planning Acts have no application to the activity, the issue in respect of No. 2 equally does not apply. The planning authority which is established under the Planning Acts to implement and monitor developments under the Planning Acts, are not entitled and have no jurisdiction with regard to those developments which are established activity and in such circumstances have no functions with regard to them.

In the event that the Agency wishes for any clarifications in respect of these matters, we will of course be more than happy to provide same. I trust this answers all of the issues that you have raised in your correspondence to us regarding the Agency's request but will of course provide any further detail in respect of this matter should you so require.

Yours sincerely,

JOHN V. KELLY & CO.

AFFIDAVIT OF PADDY HILL

I, **PADDY HILL** of Clonsura, Castletown, Finea, Mullingar in the County of Westmeath aged eighteen years and upwards **HEREBY MAKE OATH AND SAY** as follows:-

1. I make this Affidavit from facts within my own knowledge, save where otherwise appears and whereso otherwise appears, I believe same to be true and accurate in every respect.
2. I say that I was born in 1943 and I have lived in the area of Clonsura, Castletown, my entire life.
3. I say that I am familiar with bogland in the area of Co Westmeath and in particular the bogs at Doon and Camagh.
4. I further say that I specifically recall as a small boy during World War II and indeed up into the 1950s that Westmeath County Council cut turf off these bogs for the purposes of supplying fuel to Dublin.
5. I further say that I also recall that following this period many local families rented plots from the said bogs from the then owner and cut turf on same to supply their fuel needs for the year.
6. In addition, I say that I myself rented a bog at Doon from the current owners Cavan Peat Limited for the purposes of cutting turf from same from approximately 1985 to 1994. I confirm that during that period I was selling the cut turf as fuel. There were drains already on the bog when I began renting.

SWORN by the said **PADDY HILL**

This 15th day of June 2011

At 27 Church Street, Cavan

Before me a Commissioner for Oaths/

Practising Solicitor and

I know the Deponent

James Beattie
Commissioner for Oaths/
Practising solicitor

Paddy Hill
PADDY HILL

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