



To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils

Senior Planners, City and County Councils

An Bord Pleanála

Directors of Regional Assemblies

Office of the Planning Regulator

Environmental Protection Agency

Circular Letter: PL 07/2019

12 August 2019

Recent High Court Judgement re

Planning and Development Act 2000 (Exempted Development) Regulations 2019

(S.I. No. 12 of 2019)

Further to Circular Letter PL 1/ 2019 of 29 January 2019 notifying planning authorities of the making by the Minister for Housing, Planning and Local Government (MHPLG) of the Planning and Development Act 2000 (Exempted Development) Regulations 2019 – S.I. No 12 of 2019 – relating to large-scale peat extraction of 30 hectares or more, I wish to advise of a recent High Court Judgement placing a stay on the regulations until further notice following a judicial review challenge against the regulations and associated regulations made by the Minister for Communications, Climate Action and the Environment (MCCAÉ) i.e. the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019 (S.I. No. 4 of 2019).

In brief, Circular PL 1/ 2019 advised that the combined effect of the above-mentioned two sets of regulations was that with effect from 25 January 2019, peat extraction of 30 hectares or more would be exempted from the requirement to obtain planning permission under the planning code and would instead be exclusively an activity controlled by Integrated Pollution Control (IPC) licensing operated by the EPA. The legal challenge centred around the enforcement of large-scale peat extraction during the period between it being exempted from/ taken out of the planning code under S.I. No 12 of 2019 and the 18 month period which peat extractors were given to submit an IPC licence

application taking account of the requirement to undertake and submit a 4-season environmental impact assessment report (EIAR) under the procedures set out in S.I. No. 4 of 2019.

S.I. No. 4 of 2019 is not impacted by the High Court Judgement and remains in place i.e. persons engaging in large-scale peat extraction shall remain subject to the requirements of S.I. No. 4 in relation to the obtaining of an IPC licence and undertaking and submitting of an EIAR and an appropriate assessment (AA), as necessary, as part of that process.

Implications of judgement for planning system and enforcement of unlicensed peat extraction

As indicated, the primary effect of the recent Judgement is that a stay has been placed on S.I. No. 12 of 2019 made by the MPHLG with the result that the pre-existing regulatory regime under the planning code for large-scale peat extraction of 30 hectares or more must now come back into operation in the manner that applied prior to 25 January 2019. Therefore, the judgement has the effect of re-introducing enforcement of unlicensed large-scale peat extraction into the planning code, including the requirement to obtain planning permission.

Planning authorities have extensive powers in relation to enforcement under Part VIII of the Planning and Development Act 2000, as amended. In this regard, planning authorities are reminded of the Ministerial Directive on planning enforcement, which issued by way of Circular Letter PL 6/ 2013 under section 29 of the Planning Act. Paragraph 4 of the Directive states as follows:

“In discharging their functions under Part VIII of the Planning and Development Act 2000, planning authorities shall prioritise large-scale unauthorised development and enforcement cases where:

(a) The development or works subject to enforcement proceedings would have required;

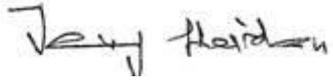
- i. environmental impact assessment (EIA);*
- ii. a determination as to whether EIA was required (i.e. screening for EIA); or*
- iii. an appropriate assessment under the Habitats Directive;*

or

(b) the works subject to enforcement proceedings are works to which section 261 or 261A of the Planning Act apply.”

The High Court case is due for further hearing in early September following which it is anticipated that a final judgement will be made. Planning authorities will be notified of the final judgement in the case in due course.

Any queries in relation to this Circular letter should be emailed to planning@housing.gov.ie

A handwritten signature in black ink that reads "Terry Sheridan". The signature is written in a cursive style with a large initial 'T'.

Terry Sheridan
Principal
Planning Policy