



An
Bord
Pleanála

Board Direction
BD-005110-20
ABP-303162-18

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on February 7th, 2020.

The Board decided that:-

- (a) a Natura Impact Assessment is required,
- (b) exceptional circumstances exist in the subject case, whereby it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent, and
- (c) the application for substitute consent shall be in respect of the entire site, including all the structures in existence, and for the use that has taken place of this site as a waste facility from the date of expiry of planning permission register reference number 04/0615 (that is, from the 12th day of April 2014) to the present date, and the application for substitute consent shall not be in respect of any continuance of this use or any future development of the site beyond the present date. (any such continuance of use and / or future development shall be the subject of a separate planning application to the planning authority subsequent to a decision on the application for substitute consent).

Accordingly, the Board decided to grant leave to apply for substitute consent, for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that an appropriate assessment is required, in respect of the development that has been carried out and the use of the site as a waste facility that has taken place.

Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by permitting leave to make an application for substitute consent.

In this regard the Board

- considered that the regularisation of the development would not be likely to circumvent the purpose and objectives of the Habitats Directive;
- having regard to the planning history of the subject site, and in particular the extension of duration, by the planning authority, of planning permission register reference number 08/40101 beyond the expiry of planning permission register reference number 04/6015, considered that the applicant could reasonably have had a belief that the development that took place was capable of being regularised under the normal Section 34 application for retention;
- considered that the ability to carry out an appropriate assessment, and for the public to participate in such assessment, has not been substantially impaired;
- considered the nature of the adverse effects on the integrity of a European site resulting from the carrying out of the development;
- considered that the applicant had carried out unauthorised development but that, in the particular circumstances of this case, such should not be a bar to

the granting of leave to apply for substitute consent, having regard to the planning history, as outlined above;

- considered that the actual or likely significant effects on a European site resulting from the development could be remediated.

Taking all of the above into consideration, it is considered that exceptional circumstances exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

Note: The notice to the applicants advising of this decision should also direct that:

- (a) the application must be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate,
- (b) the application must include a remedial NIS, and
- (c) the application for substitute consent shall be in respect of the entire site, including all the structures in existence, and for the use that has taken place as a waste facility from the date of expiry of planning permission register reference number 04/0615 (that is, from the 12th day of April 2014) to the present date, and shall not be in respect of any continuance of this use or any future development of the site beyond the present date. (Any such continuance of use and / or future development may be the subject of a separate planning application to the planning authority subsequent to a decision on the application for substitute consent).

[Secretariat: Please issue a copy of this Direction to the parties with the Board Order]

Board Member

Date: 7th February 2020

Philip Jones