



An  
Bord  
Pleanála

**Board Direction**  
**BD-004105-19**  
**ABP-304580-19**

The submissions on this file and the Planning Inspector's report were considered at a Board meeting held on September 25<sup>th</sup>, 2019.

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

In not accepting the recommendation of the Planning Inspector to grant leave to apply for substitute consent, the Board noted the acceptance, by the applicant, that the developments that had been carried out and were shown on drawing number MSL002\_003 as “for retention”, were not in accordance with planning permission register reference number 11/51/0331. In addition, having regard to the different legal provisions as between a planning permission granted under the Planning and Development Act, 2000, as amended, and a waste facility permit under the Waste Management Act 1996, the Board was not satisfied that the applicant in this instance could reasonably have had a belief that the development that had been carried out was not unauthorised. The Board did not consider that it had been demonstrated that exceptional circumstances exist in this case so as to permit the regularisation of the development in question.

### **Reasons and Considerations**

Having regard to section 177D of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act, 2010, the Board considered that a determination as to whether an Environmental Impact

Assessment is required, or an Environmental Impact Assessment, is required in respect of the subject development. Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to permit the 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 circumvent the purpose and objectives of the Environmental Impact Assessment Directive.,
- considered that the applicant could not reasonably have had a belief that the development that has taken place was not unauthorised, and in particular, the developments outlined in the request for leave to apply for substitute consent and shown on drawing number MSL002\_003 as “for retention”, in the light of the planning history of the site, and also having regard to the fact that a waste facility permit does not confer any authorisation under the Planning and Development Act, 2000, as amended,
- considered that the ability to carry out an Environmental Impact Assessment and for the public to participate in such an assessment has not been substantially impaired,
- considered that the development has not had significant effects on the environment, over and above those already assessed as part of planning permission register reference number 11/51/0331, and that therefore such effects could be remediated, and
- considered that the applicant had not complied with planning permission granted under register reference number 11/51/0331, through the construction of the developments outlined in the request for leave to apply for substitute consent and shown on drawing number MSL002\_003 as “for retention”, notwithstanding the fact that no enforcement had been taken by the planning authority.

The Board concluded that exceptional circumstances do not exist such that it would be appropriate to permit the regularisation of the development by permitting leave to apply for substitute consent, and decided to refuse leave to make an application for substitute consent.

**Note:** The Board noted that the request for leave to apply for substitute consent, as submitted by the applicant, included proposed works. An application for substitute consent, if leave to apply for it had been granted pursuant to a request under Section 177C (2)(b), could only be for development that has already been carried out, and could not, by law, include any proposed development.

[Please issue a copy of this Direction, with the Board order, to the parties.]

**Board Member**

**Date:** 25<sup>th</sup> September 2019

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Philip Jones