



Board Direction

Ref: 03.LS0020

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on December 17th 2015. The Board decided, by a vote of 4 to 1, generally in accordance with the recommendation of the Senior Planning Inspector, that:

- (a) Appropriate Assessment is required, and
- (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,

Accordingly,

- The Board decided to grant leave to apply for substitute consent, for the Reasons and Considerations set out below,
- To direct that the application for substitute consent shall be in respect of the construction of the subject sea defence wall (rather than the replacement or reinstatement of a sea defence wall), and
- To direct that the application for substitute consent shall include a remedial Natura Impact Statement which, inter alia, shall assess the impact of the subject development on coastal processes, and assess the potential for increased deposition and/or erosion along the coastline as a result of the subject development.

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 Appropriate Assessment is required in respect of the development concerned, and the Board concluded that exceptional circumstances exist.

In this regard, the Board:

- considered, notwithstanding the uncertainty as to whether the regularisation of the development would or would not circumvent the purpose and objectives of the Habitats Directive, that the applicant, in the particular circumstances of this case, could reasonably have had a belief that the development was not unauthorised;
- considered the nature and limited scale of the development;
- considered that the ability to carry out an Appropriate Assessment and provide for public participation has not been substantially impaired;
- considered the limited nature of the actual/likely adverse effects on the integrity of a European site resulting from the development;
- considered the extent to which any such adverse effects on the integrity of a European site resulting from the development can be remediated;

and, therefore, concluded that exceptional circumstances exist such that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

Note 1: The notice to the applicants advising of this decision should also direct:

- (a) that 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) that the application for substitute consent shall be in respect of the construction of the subject sea defence wall (rather than the replacement or reinstatement of a sea defence wall) , and
- (c) that the application must include a remedial Natura Impact Statement which, inter alia, shall assess the impact of the subject development on coastal processes, and assess the potential for increased deposition and/or erosion along the coastline as a result of the subject development.

Note 2: The Board concurred with the Senior Planning Inspector that it would be necessary for the applicant to provide evidence of his legal interest in the site on which the subject development took place or, if he had no such legal interest, written evidence of consent to the making of the application for substitute consent by the person or persons who have such legal interest.

Please also issue a copy of this Direction with the Board Order

Board Member: _____ Date: January 5th 2016
Philip Jones