



Board Direction

Ref: 26.LS0022

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on December 17th 2015.

In addition to the subject file, the Board had before it relevant history files (as listed in section 3 of the Inspector's Report).

- The Board decided to refuse leave to apply for substitute consent, and
- The Board also decided not to invoke its powers under section 177L of the Planning and Development Act 2000, as amended.

for the Reasons and Considerations set out below.

In not accepting the recommendation of the Senior Planning Inspector to grant substitute consent, the Board did not consider, having regard to the planning history of the site, that the applicant could reasonably have had a belief that the development was not unauthorised, nor that the works that he had carried out could have constituted exempted development, having regard to the planning history of the site, and 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 Appropriate Assessment is required in respect of the development concerned, and also that a determination is required as to whether an Environmental Impact Assessment would also be required. 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 or of the Habitats Directive,
- considered that the applicant could not reasonably have had a belief that the development was not unauthorised, particularly in the light of the planning history of the subject site,
- considered that the ability to carry out an Appropriate Assessment and an Environmental Impact Assessment and for the public to participate in such assessments has not been substantially impaired,
- considered that the development has had significant effects on the environment, in particular through the infilling of an area of historic wetlands, and may have adversely affected the integrity of the adjoining European site as a result of the carrying out of such infilling,
- considered that the significant effects on the environment and adverse effects on the integrity of a European site could be remediated, but that such remediation might, in itself, have potential significant effects and impacts,
- noted the planning history of the site, and in particular the report of the Board's Inspector in relation to application 2004/4998 (An Bord Pleanála reference no PL26.212843).

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.

In relation to section 177L of the Act, the Board did not consider it necessary to invoke the powers available to it under section 177L of the Act.

Board Member: _____
Philip Jones

Date: 23rd December 2015