



An
Bord
Pleanála

Board Direction 21.LS0032

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on December 15th 2017.

The Board decided that:-

- (a) An Environmental Impact 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 include a remedial Environmental Impact Assessment Report.

REASONS AND CONSIDERATIONS

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, and having regard to the judgement of the High Court of 11th May 2017 (Patrick Daly and Kilronan Windfarm Limited and Derrysallagh Windfarm Limited) the Board is satisfied that an environmental impact assessment is 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 reasonably have had a belief that the development was not unauthorised,
- considered that the ability to carry out an Environmental Impact Assessment and an Appropriate Assessment and for the public to participate in such assessments has not been substantially impaired,
- notes the enforcement correspondence on file in respect of the associated windfarm,
- considers that the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, can be remedied;

Taking all of the above into consideration, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for the 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, and
- (b) the application must include a remedial Environmental Impact Assessment Report.

Board Member

Date: 15th December 2017

Philip Jones