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## **Planning and Development Acts 2000 to 2019**

### **Planning Authority: Donegal County Council**

**Application for Leave To Apply For Substitute Consent** by John Caulderbanks care of Patrick Canning of Ballylawn, Manorcunningham, County Donegal.

**Development:** Waste facility and activity at Labbadish, Manorcunningham. County Donegal.

## **Decision**

**GRANT** leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## Reasons and Considerations

Having regard to section 177D of the 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 register reference number 08/40101 beyond the expiry of planning 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; and
- 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.

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**Philip Jones**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2020.**