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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Tipperary County Council**

**Application for Leave To Apply For Substitute Consent**, by H and L Environmental Services Limited care of Miltcon Services Limited of Schalks House, Bridge Street, Headford, County Galway.

**Development:** A development consisting of a weighbridge, digester, crop drying shed, reception shed, offices, road entrance, internal access road and digestate storage tank at Derryville, Moyne, Thurles, County Tipperary.

**Decision**

**REFUSE** 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 amended, 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, planning 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 planning 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.

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, planning 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.

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**Philip Jones**

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

**Dated this            day of            2019.**