

Ronar Megannety

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Sent: Monday 23 June 2025 16:14
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From: Sean O'Callaghan <socallaghan@antaisce.org>
Sent: Monday, June 23, 2025 4:11 PM
To: Bord <bord@pleanala.ie>
Subject: Ref: 322432

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A Chara,

Please find enclosed An Taisce's submission on planning application ref: 322432.

Is mise le meas,

Seán O'Callaghan
Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland
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An Taisce

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20250623-ACP-322432

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Sent by email to: bord@pleanala.ie

23rd June 2025

Ref: 322432

App: Bison Quarries Ltd

For: Application for substitute consent under Section 177E for quarry. A remedial EIAR accompanies the application.

Site: Coolsickin or Quinsborough, Monasterevin, Co. Kildare.

A Chara,

An Taisce would like to make the following observation on the above application for substitute consent.

We consider that this application warranted referral to An Taisce under Article 28 of the Planning and Development Regulations 2001 (as amended) as it contains an rEIAR and rNIS.

1. Exceptional Circumstances

1.1 Definition of Exceptional Circumstances

Section 177K(1J) of the Planning and Development Act 2000 (as amended) states the following with regard to defining exceptional circumstances:

"In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

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Directors: Stuart McCaul (Chair), Terri Morrissey (Vice Chair), John Conroy (Treasurer), Laura Segura Gutierrez (Secretary),
Trish O'Connell, Olivia Rogers, Rónán O'Brien, Finbarr Murray, Helen Shaw, Phil Doyle, Tony Holohan

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Board considers relevant."

As a preliminary matter, An Taisce submits that the definition of exceptional circumstances per Section 177K(1J) requires consideration by the Irish Courts to determine its alignment with CJEU judgements regarding the standards for exceptionality in, for example, c-215/06. It is our view that s.177K(1J) is not consistent with the views of the European Court.

First, we would highlight paragraphs 57 and 58 of the CJEU judgment in c-215/06:

"57. While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58. A system of regularisation, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects."

These two paragraphs set out what Mr Justice Garrett Simons described in *Suaimehneas Limited v Kerry County Council* (neutral citation [2021] IEHC 451)¹ as "the limits of a Member State's discretion to regularise the status of development projects carried out in breach of the requirement of the EIA Directive" (para. 49). Essentially, these limits are:

- A regularisation system (such as substitute consent) should not allow for opportunities to circumvent EU laws and should not incentivise the circumvention of EU laws.
- Any regularisation still must adhere to and apply EU laws.
- Any regularisation should be permitted *only* in exceptional circumstances.

It is our firm view that the current definition of exceptional circumstances in s.177K(1J) incorrectly amalgamates two separate issues: a) what actually constitutes an exceptional circumstance, and b) the other limits on regularisation as detailed above.

Second, the definition in s.177K(1J) gives the Board exceptionally broad discretion to consider any issue it so chooses when determining whether or not exceptional circumstances exist (per s.177K(1J)(g) "*such other matters as the Board considers relevant*").

We would highlight that neither *An Taisce v An Bord Pleanála* (neutral citation [2020] IESC 39)² nor *Friends of the Irish Environment CLG v Minister for Communications, Climate Action and the Environment & Others* (neutral citation [2019] IEHC 646)³ actually examined the adequacy of the definition of exceptional circumstances in s.177K(1J) in comparison with the CJEU's judgements in c-215/06, etc. The Supreme Court judgement in [2020] IESC 39 only compared the checks in the leave application process against the requirements of exceptional circumstances in s.177K(1J). Similarly, in [2019] IEHC 646, the High Court was comparing new regulations with the existing definition in the Act at the time.

We therefore submit that An Bord Pleanála should seek a referral to the High Court on the proper definition of exceptional circumstances as laid out in s.177K(1J) of the Planning and Development Act 2000 (as amended) and its alignment with the standards of exceptionality set out by the CJEU in c-215/06 and others.

2. Remedial Environmental Impact Assessment Report (rEIAR)

We note a potential discrepancy in the impact determination associated with dust deposition from historic quarry related activity on sensitive ecological receptors, with both "moderate" and "minor" determinations being cited by the applicant. We are of the view that the acknowledged impacts may be more substantial than indicated by the applicant, "*Habitat degradation due to dust deposition had a minor effect on the River Barrow and River Nore SAC, amphibians, bats, badgers, breeding birds, fish and aquatic invertebrates. Finally, disturbance / mortality was considered to have been a minor effect on amphibians, badgers, breeding birds, pine marten and reptiles.*" (rEIAR NTS, p. 8). Notwithstanding the contradictory impact determinations, we submit that a larger impact determination may be in effect within this application, potentially requiring reassessment, a point needing clarification by An Coimisiún as a preliminary matter.

We also note that the Water Framework Directive (WFD) demonstration of compliance within the applicant's rEIAR places a lot of emphasis on the interception of runoff via riparian buffer zones, "*Any run-off event from the Site would likely be absorbed by a dense hedgerow/treeline and a strip of grassland which separates the Site from the Grand Canal, or infiltrate to ground through the superficial sands and gravels, prior to reaching the Canal in any significant quantity.*" We submit that An Coimisiún should consult historic satellite imagery to determine the presence or absence of such features when deciding whether the historic extraction activity was likely to introduce polluting runoff to the aquatic ecosystem. Given the proximity of the historic quarry site to the Grand Canal, impacts from quarry operations cannot be ruled out due to the buffer zone being thin with potentially reduced efficacy as a result. This is exacerbated by the reference to 212 metres of hedgerow being lost to facilitate the development, reducing any buffering effects even further.

With regard to groundwater, we submit that close consideration should be given to the potential for the Grand Canal and the subject site to be hydrologically linked, with implications for environmental impact as a result of historic quarrying operations.

Please acknowledge our submission and advise us of any decision made.

Is mise le meas,

Seán O'Callaghan

*Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland*