

Karen Byrne

322432-25

From: Brendan Byrne <bbyrne8627@gmail.com>
Sent: Tuesday 2 September 2025 16:07
To: Appeals2
Subject: Case No. 332432
Attachments: ABP.pdf

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To whom it may concern,

Please see attached document for your attention.

Kind regards,

Brendan Byrne.

To: An Bord Pleanála

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

Subject Development: Coolsickin or Quinsborough, Monasterevin, Co. Kildare

Applicant: Bison Quarries Ltd.

ABP Case Reference: 322432

Observer: Brendan Byrne

Date: 29th August 2025

I. INTRODUCTION

This observation is submitted in response to the report issued by Kildare County Council under **Section 177I of the Planning and Development Act 2000 (as amended)** in relation to the substitute consent application by Bison Quarries Ltd. for the quarry site at Ballykelly, Monasterevin.

Having carefully reviewed the Council's submission, I submit that it is **procedurally defective, legally non-compliant, and factually insufficient** for the purposes intended under the Act. It **fails to meet the statutory requirements of Section 177I(2)**, omits critical environmental and public health considerations, and falls short of its legal duty under **Article 6(3) of the Habitats Directive**.

This observation highlights those failings and explains why An Bord Pleanála **cannot rely upon this report** in any assessment of the application.

II. FAILURE TO SATISFY SECTION 177I(2) REQUIREMENTS

Section 177I(2) sets out five specific obligations the Planning Authority must address:

(a) Planning History

KCC outlines elements of the site's planning history but fails to acknowledge unauthorised quarrying that occurred after 2006. It is documented (and supported by photographic and testimonial evidence already submitted) that the quarry void was excavated below the water table, causing extensive flooding, requiring unauthorised pumping for years, and reportedly drying local wells. This was omitted entirely from the planning history and creates a materially misleading record.

(b) Relevant Policies

KCC lists numerous national and County Development Plan (CDP) policies, but there is no critical engagement with how the development fails to comply with key policies on groundwater protection, biodiversity, or protection of sensitive receptors. It is a policy

citation exercise, not a policy evaluation. No attempt is made to reconcile the development with:

- RD048 – Protection of Groundwater Resources (Kildare CDP 2023–2029, Chapter 7: Water, p. 213)
- BI02 – Protection of Natura 2000 Sites and Compliance with Article 6(3) (CDP Chapter 13: Natural Heritage and Biodiversity, p. 335)
- NH04 – Preservation of Hydrological Links to SACs/Designated Sites (CDP Chapter 13, p. 337)

Also absent is any discussion of Population and Human Health objectives under Section 8.6.1 of the CDP (p. 246).

(c) Environmental Sensitivities

KCC's treatment of environmental sensitivity is superficial. It mentions hydrology and ecology in general terms but fails to:

- Identify the locally important aquifer beneath the site
- Reference the flooded void, now filled with unknown water quality
- Address well vulnerability for surrounding residents
- Recognise hydrological connectivity to the River Figile and downstream SAC
- Note the presence of a residential care home within 120m, whose residents have medical vulnerabilities to noise and dust

In short, the report lacks the specificity and rigour expected of a statutory submission.

(d) Opinion on the Remedial EIAR and NIS

KCC entirely fails to comply with this requirement. There is no evaluative opinion on whether the rEIAR:

- Meets Schedule 6 of the Planning and Development Regulations
- Adequately assesses cumulative impacts
- Properly models groundwater risks
- Complies with the EPA 2017 EIAR Guidelines

There is no reference at all to the Appropriate Assessment Screening submitted by the developer. Under Article 6(3) of the Habitats Directive, KCC has a direct legal duty to form a view on whether the project could affect the integrity of a European site. It abdicates that responsibility.

(e) Recommendation

While KCC states that the development is acceptable "in principle," it does not address the precarious legal status of the site, which remains unauthorised pending the substitute consent application. Section 177I(2)(e) does not permit abstract recommendations — they must be grounded in compliance with the Act, environmental law, and proper assessment. That is absent here.

III. CRITICAL OMISSIONS

Care Home (Prader-Willi Syndrome)

Nowhere in the KCC report is there reference to the specialised care home situated less than 120 metres from the quarry.

This omission is material and breaches Schedule 6(2)(b)(i) of the Planning and Development Regulations, which requires population and human health assessments.

The care home supports individuals with Prader-Willi Syndrome, a disorder associated with cognitive impairment and heightened environmental sensitivity.

This is a known sensitive receptor under EIA and EPA guidelines.

The failure to recognise and assess this risk renders the KCC report incomplete and procedurally unsound.

Groundwater and Hydrochemistry

The report accepts without challenge the developer's assertion that water in the quarry results only from "direct rainfall recharge."

It ignores documented evidence of a broken water table, unauthorised pumping, and local well interference.

There is no mention of whether the flooded quarry water has been tested, whether discharge to the Figile is possible, or whether downstream SAC pathways have been assessed.

A development that breaches groundwater protection policy RD048 and biodiversity protection policy BI02 cannot, under the County Development Plan, be considered 'acceptable in principle'. KCC's position is not evidence-based and conflicts with its own statutory plan.

KCC thus fails to satisfy its obligations under the Groundwater Regulations 2010 and Water Framework Directive.

IV. SECTION 177I(2)(d) FAILURE IS FATAL

The complete absence of any evaluation of the remedial EIAR and AA Screening constitutes non-compliance with Section 177I.

ABP cannot consider this report valid under the Act.

Any reliance upon it would leave the Board open to judicial review for breach of statutory duty and failure to exercise independent judgment.

V. LEGAL AND PROCEDURAL CONSEQUENCES

Under Article 6(3) of the Habitats Directive, any uncertainty must be resolved through a full Appropriate Assessment. The failure of KCC to raise concern does not remove ABP's obligation to do so.

Under Irish law, the Board must not grant consent unless satisfied that all statutory reports have been properly submitted and lawfully prepared.

In *Sweetman v An Bord Pleanála* (C-258/11), the CJEU confirmed that where any doubt exists about impacts on a European site, a full Appropriate Assessment must be triggered.

Given that this 177I report fails multiple statutory duties, the Board cannot lawfully support a grant of substitute consent.

VI. CONCLUSION

The KCC submission under Section 177I is:

- Legally deficient
- Factually incomplete
- Procedurally non-compliant

It fails to discharge the Planning Authority's statutory obligations under the Planning and Development Act and relevant European environmental law. The Board must therefore:

- Give the KCC submission minimal to no evidentiary weight, and
- Refrain from proceeding to consent until:
 - A compliant Section 177I report is submitted,
 - A full Stage 2 Appropriate Assessment is conducted,
 - Groundwater and health risks are properly evaluated.

Failure to take these steps would violate the precautionary principle and risk undermining the integrity of the planning process.

Yours Sincerely,

Brendan Byrne

Coill Glas House

Ballykelly

Monasterevin

Co. Kildare

bbyrne8627@gmail.com