

Submission regarding application for Substitute Consent under Section 37L by Bison Quarries/Ray Grehan Ltd.

Planning Reference: FD09 322722

Applicant: Bison Quarries Ltd

Location: Disused quarry at Coolsickin or Quinsborough, Ballykelly, Monasterevin, Co. Kildare

Objector: Emma Hartigan, and Michael Callanan, Coolsickin, Quinsborough, W34X466

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Date: 30th July 2025

1. Introduction

We are writing to formally object to the application by Bison Quarries Ltd for Substitute Consent under Section 37L of Bison Quarries application of substitute consent FD09 322722 (as amended).

This submission is made on behalf of my husband, Michael and Myself. Our objection is grounded in evidence-based concerns related to hydrology, environmental law, procedural integrity, and compliance with both Irish and European planning requirements. We respectfully request that An Bord Pleanála refuse this application for substitute consent.

2. Grounds for Objection.

2.1 Material Misrepresentation of Operational Timeline

The rEIAR and associated documents claim that quarry operations ceased in 2006. However, I have provided photographic evidence of dewatering activity at the site in 2007, and a blasting notification dated January 2009. A statement of account dated November 2009, issued by the former quarry operator to a local businessman, further confirms that commercial activity continued well beyond the declared cessation year of 2006. These activities constitute unauthorised development beyond the declared assessment period and were not assessed in the rEIAR or rAA Screening. The environmental assessment period must be extended accordingly, and the retrospective narrative presented within the application attachments are materially inaccurate.

This type of retrospective distortion was a critical factor in An Bord Pleanála's refusal of substitute consent in *SU07.308019 – Derrybrien Wind Farm*, where unauthorised activity occurred in the absence of proper rEIA or rAA. ABP held that granting substitute consent in such circumstances would undermine the integrity of the planning system and contravene EU law. Similar reasoning applies here, where post-2006 quarrying activity — including documented dewatering and blasting in 2007 and 2009 — was neither disclosed nor assessed in the rEIAR or rAA Screening.

Similarly, we possess photographic evidence of water pumping operations occurring at the site in 2007. This unregulated activity further undermines the credibility of the applicant's claims regarding surface water and groundwater impact pathways and contradicts the speculative and unsupported assumptions in the rAA Screening and rEIAR. It must be assumed that the water pumped onto the canal bank found its way, not only into the canal, but also into the stream

located at 53°10'09"N 7°02'38"W. This stream flows into the River Figile located at 53°10'05"N 7°03'53"W, which in turn flows into The River Barrow (SAC) located at 53°08'56"N 7°04'24"W.

Legal Consequence: The substitute consent application is materially incomplete. Under Section 177D and relevant case law (notably *C-215/06, Commission v Ireland*), any unassessed activity likely to have a significant effect on the environment or on a European site invalidates the application.

2.2 DEFICIENCIES IN THE REMEDIAL EIA AND APPROPRIATE ASSESSMENT SCREENING

The rEIAR and rAAS are retroactive documents prepared almost two decades after the unauthorised activity occurred. Key deficiencies include:

- Absence of empirical environmental data from the operational period (2000–2006), and failure to acknowledge or assess the continued operation in 2009.
- No hydrological or hydrogeological monitoring logs submitted.
- Blasting, noise, dust, and water discharge assumed to have been controlled without verifiable evidence.
- No clear identification of mitigation failures or ecological recovery.

The rAA screening fails to apply the "precautionary principle" appropriately, as required under CJEU jurisprudence. The dismissals of Likely Significant Effects are based on lack of evidence of harm, not positive proof of absence.

2.3 Groundwater Pollution Evidence

- Nitrate (NO₃) values in BH1 ranged from 44.7 to 79.6 mg/l (vs GTV of 37.5 mg/l)
- Total Iron in BH4 reached 204,054 µg/l (vs GTV of 1,000 µg/l)
- Chromium and Manganese also showed irregular spikes

rAA Consequence: Under Article 6(3) of the Habitats Directive and the *Waddenzee* ruling (C-127/02), these values create reasonable scientific doubt regarding likely significant effects on the SAC. A Stage 2 rAA is therefore mandatory.

Furthermore, the applicant has provided no justification under Article 6(4) of the Habitats Directive, which requires that where significant adverse effects on a European site cannot be ruled out, consent may only be granted in the absence of alternatives and for **Imperative Reasons of Overriding Public Interest (IROPI)**. No such case has been made. Quarry restoration does not constitute an IROPI under EU or Irish law. In the absence of a Stage 2 rAA, or any credible IROPI justification, the application must be refused in line with settled EU jurisprudence.

2.4 Failure to Address Cumulative and Legacy Impacts

The rAA Screening and rEIAR dismiss cumulative impacts with neighbouring quarry sites by asserting that good practice was followed. No data is supplied to verify this. Furthermore, the

current applicant was not the original operator and cannot credibly attest to operational standards between 2000–2006 and has excluded same for the known operational period up to 2009.

In 27.SU.0121 – *Wicklow Quarry*, ABP refused substitute consent where the rEIAR failed to provide site-specific hydrological data and did not evaluate cumulative impacts from nearby operations. The present application exhibits the same deficiencies: no empirical monitoring records, no verified pollution baselines, and no cumulative hydrological modelling. As in the Wicklow case, the absence of such critical information precludes a lawful or evidence-based determination.

These failings mirror the grounds on which An Bord Pleanála refused substitute consent in SU07.308019 – *Derrybrien Wind Farm* (unauthorised post-consent activity and EU law concerns) and 27.SU.0121 – *Wicklow Quarry* (missing baseline data and cumulative assessment failures). The same principles apply here and support refusal under Section 177K(2).

Legal Implication: Substitute consent requires a full and accurate environmental assessment of *all unauthorised activity on the land*, regardless of ownership. This has not been done.

4. Conclusion and Requested Determination

The applicant has failed to demonstrate compliance with national and EU legal requirements. The site operated in breach of planning control, in a sensitive hydrogeological and ecological setting, with no verifiable safeguards in place. The retrospective assessments lack the precision, completeness, and scientific certainty required under the Habitats Directive.

The continuation of blasting activity into 2009—three years beyond the applicant’s declared cessation date of 2006—fatally compromises the credibility of the remedial assessment. It significantly expands the temporal and environmental scope of the unauthorised development, with implications that were neither disclosed nor assessed.

There is photographic evidence which had been submitted by fellow community objections, of unregulated dewatering in 2007 that constitutes more than a historical footnote — it is direct proof that environmentally impactful operations continued well beyond the claimed cessation date, in a manner that was entirely unauthorised, unmonitored, and unassessed. This activity had clear hydrological implications, including the potential mobilisation of contaminants and alteration of groundwater behaviour, in an area already classified as having extreme groundwater vulnerability.

This is not a technical irregularity. It is a fundamental omission that undermines the factual integrity of the substitute consent application. The environmental baseline presented is demonstrably incomplete. The legal scope of the development described is demonstrably false. And the assessment of likely significant effects is, therefore, demonstrably unreliable.

These are not issues that can be cured by post hoc clarification or supplementary data. They go to the heart of the application’s legal admissibility under Section 177D and to the procedural validity of any determination under Section 177K. Where unauthorised development has occurred, the onus is on the applicant to provide a full and accurate account. That standard has not been met.

To grant substitute consent in this context would go beyond a technical error. It would effectively legitimise prolonged, unauthorised development within a hydrologically sensitive zone—development carried out in the absence of planning permission, environmental safeguards, or contemporaneous regulatory scrutiny.

In light of the material omissions, unassessed environmental risks, and procedural deficiencies outlined above, we respectfully request that An Bord Pleanála:

- Refuse substitute consent under Section 177K(2) on the basis that the application fails to comply with national and EU planning law.

Yours faithfully,

Emma Hartigan & Michael Callanan

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