

**From:** planning enforcement <planningenforcement@Donegalcoco.ie>  
**Sent:** Wednesday 14 September 2022 13:09  
**To:** Appeals2; Bord  
**Subject:** Application for Substitute Consent for a quarry at Gortletteragh, Stranorlar, Co. Donegal.  
**Attachments:** 20220912\_Bord Pleanala.pdf

**OUR REF:** EUQY31  
**YOUR REF:** SU 05E.SU0138

A Chara,

I refer to your correspondence in the abovementioned case dated 08/09/2022, received by the Planning Authority on 09/09/2022 and have noted the content of the attached submission from An Taisce dated 25/07/2022.

I can confirm the Planning Authority does not have any further comment to make at this time.

Is mise le meas

**Planning Enforcement Unit  
Donegal County Council**



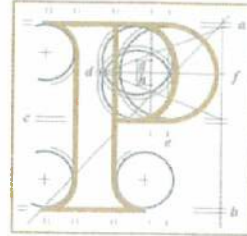
**Comhairle Contae  
Dhún na nGall  
Donegal County Council**

[Email Disclaimer](#)

[Clásal Séanta Ríomhphoist](#)



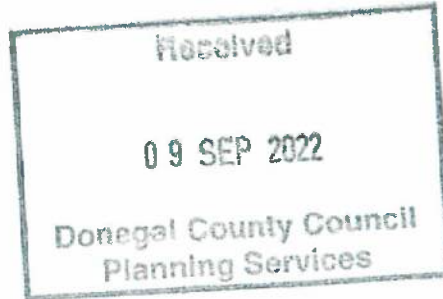
Our Ref: SU 05E.SU0138  
P.A.Reg.Ref: EUQY31



U02032

An  
Bord  
Pleanála

The Secretary,  
Planning Section,  
Donegal County Council  
County House,  
Lifford,  
Co. Donegal,



8th September 2022

**Application** Re: Application for substitute consent for a quarry.  
Gortletteragh, Stranorlar, Lifford, Co. Donegal.

Dear Sir/Madam,

I have been asked by An Bord Pleanála to refer to the above mentioned application.

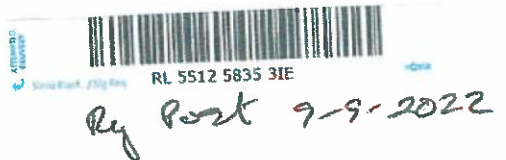
The Board is of opinion that, in the particular circumstances of this application, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submissions received 25th July, 2022 received from Health Service Executive and from An Taisce.

In accordance with section 131 of the Planning and Development Act 2000 you are requested to make any submissions or observations that you may have in relation to this enclosure on or before **28th September, 2022**. The Board cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Board not later than **5.30 p.m. on the date specified above**.

Please quote the above reference number in any further correspondence.

Yours faithfully,

Lita Clarke  
Executive Officer  
Direct Line: 01-8737158



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**20220725-ABP-SU0138**

An Bord Pleanála  
64 Marlborough Street  
Dublin 1

Sent by email to: [bord@pleanala.ie](mailto:bord@pleanala.ie)

25<sup>th</sup> July 2022

**Ref: SU 05E.SU0138**  
**App: Patton Bros. Quarry Limited**  
**For: Application for substitute consent for a quarry**  
**Site: Gortletteragh, Stranorlar, Lifford, Co. Donegal**

A Chara,

Thank you for requesting comment from An Taisce on the above application for substitute consent.

It is submitted that the definition of exceptional circumstances per Section 177D(2) of the Planning and Development Act 2000 (as amended), and hence the definition used to establish exceptional circumstances in the subject case, is inconsistent with the views of European Court on the thresholds for exceptional circumstances. We therefore submit that An Bord Pleanála should seek a referral to the High Court in this regard.

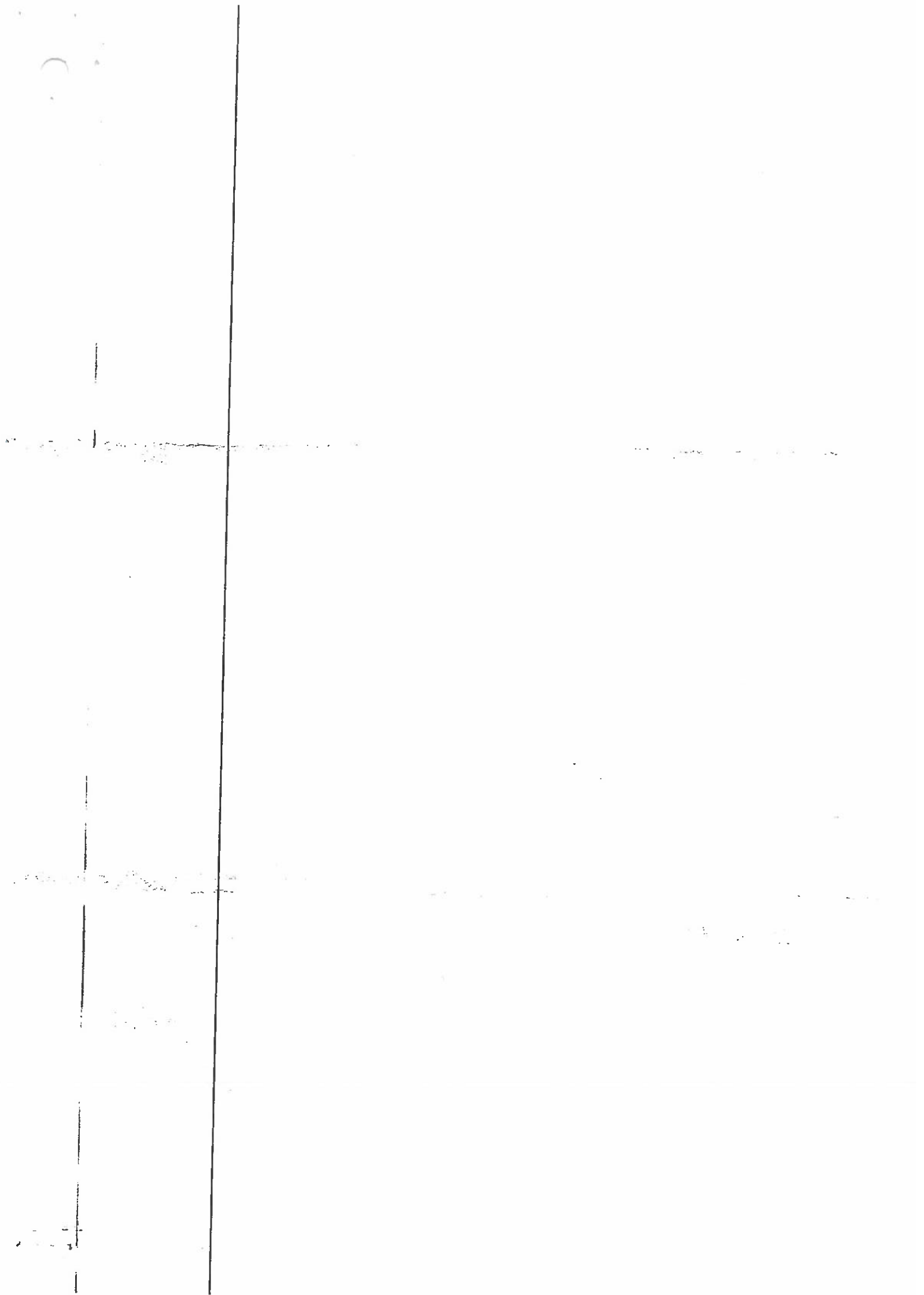
Please acknowledge our submission and advise us of any decision made.

Yours sincerely,

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











An tOifig Náisiúnta um Sláinte Chomhshaoil  
Feidhmeannacht na Seirbhíse Sláinte,  
Urlár 2, Teach na Darach, Ascaill na Teile  
Páirc na Mílaoise, An Nás, Co. Chill Dara.

National Office for Environmental Health Services  
2nd Floor, Oak House, Lime Tree Avenue  
Millennium Park, Naas, Co. Kildare  
Eircode: W91KDC2

T: 045 880 442  
[ehnationaloffice@hse.ie](mailto:ehnationaloffice@hse.ie)

22<sup>nd</sup> July 2020

Reference ID2453

ABP ref: SU 05E.SU0138  
PA Re Ref: EUQY31

**Application for Substitute Consent for Quarry at Gortletteragh, Stranorlar, Lifford, Co. Donegal**

This is the submission by the Environmental Health Service (EHS) with regard to a request by ABP for observations on the 'exceptional circumstances' criteria when considering the above application for substitute consent.

The following HSE stakeholders were informed of the request on the 6<sup>th</sup> July 2022 and invited to make any observations they felt appropriate to the EHS:

- HSE Emergency Planning
- HSE Estates
- Assistant National Director for Health Protection  
National Clinical Director for Health Protection
- Community Health Organisation for Donegal

Any clarification required on the content of this submission should be directed to Andrew Sulley, SEHO at [Andrew.sulley@hse.ie](mailto:Andrew.sulley@hse.ie)



The EHS has seen and noted the content of the submission made to ABP by the Applicant's Planning Consultant dated 26<sup>th</sup> August 2021.

The EHS notes the statement by ABP in the cover letter to Joe Bonner dated 30<sup>th</sup> July 2021 that the Board can take account of any previous decision with regard to this application.

The EHS notes that the request from ABP to the HSE is for observations on the 'exceptional circumstances' requirement to permit an application for Substitute Consent and the response by the Planning Consultant to ABP dated 26<sup>th</sup> August 2021.

The EHS has considered this as a new application with the relevant assessment criteria now under the Planning and Development and Residential Tenancies Act 2020.

The relevant criteria now being:

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

- (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

The EHS makes the following observations within the remit of the protection of public and environmental health:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive**

The understanding of the EHS is that this stage of the process is to make a decision on whether a substitute consent application can be made. There is, neither implied nor explicit, content in the substitute consent process to conclude that any consent should or will be given at the end of the process if the exceptional circumstances criteria is met. If the development is regularised then it will have to meet the objectives of the EIA and Habitats Directives prior to consent being given.



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2nd Floor, Oak House, Lime Tree Avenue  
Millennium Park, Naas, Co. Kildare  
Eircode: W91KDC2

T: 045 880 442  
[ehnationaloffice@hse.ie](mailto:ehnationaloffice@hse.ie)

22<sup>nd</sup> July 2020

Reference ID2453

ABP ref: SU 05E.SU0138  
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Any clarification required on the content of this submission should be directed to Andrew Sulley, SEHO at [Andrew.sulley@hse.ie](mailto:Andrew.sulley@hse.ie)



There is no evidence in the history of submission of EIA and remedial EIA for the development that the applicant has tried to circumnavigate the objectives of the EIA or Habitats Directive.

This history is detailed on page 29/35 of the submission by the Consultant dated 26<sup>th</sup> August 2021.

**(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;**

The submission dated 26<sup>th</sup> August 2021 contains full details as to why the applicant believed the development was not unauthorised. The validity of the points detailed is outside the expertise of the EHS to comment on.

**(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;**

The EHS is of the opinion that there is no reason to conclude that a full remedial EIA cannot be carried out that includes public participation and input from Statutory and non Statutory Agencies.

The EHS would go further and state that this should be carried out as an important health protection measure. The only way that the existing or future health and environmental risks (if any) from the already carried out development can be assessed is through this process. If the applicant is not given consent to apply for substitute consent then these health and environmental risks will not going to be assessed within the defined criteria of the EIA Directives. The carrying out of a rEIA will identify any mitigation or remediation required and inform of existing, historic and/or future risks to health and the environment. Decisions can then be made based on this.

The EHS emphasises that advocating for the assessments to be carried out is not an opinion on whether consent should be given or not.

The EHS concurs with the conclusion on page 31 of the submission dated 26<sup>th</sup> August 2021 in this regard.

**(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;**

The EHS would be of the opinion that the above criteria can only be properly considered once environmental assessment have been carried out as part of the substitute consent process. When this information is available and residual impacts have been identified an informed decision can be made as to whether grant consent for continued use.



Whilst there are common issues with quarries that have been detailed in the submission dated 26<sup>th</sup> August 2021, proper public scoping of a rEIA followed by assessment, is the most effective way of considering this criteria. This can only be done if the applicant is given consent to make a substitute consent application.

**(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;**

The EHS reiterates the previous point. The size of the existing quarry does not indicate that any adverse effects cannot be remediated if required. There is no evidence at this stage that there will be a requirement to remediate any European site or that one has actually been impacted. This is supported by the details given by the applicant on page 32 of the submission dated 26<sup>th</sup> August 2021.

**(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;**

The EHS notes the detailed planning history in the submission dated 26<sup>th</sup> August 2021 and makes no additional comments.

Andrew Sulley

  
Andrew Sulley  
Senior Environmental Health Officer



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