

Lita / Lisa.

Lita Clarke

From: Bord
Sent: Monday 25 July 2022 16:57
To: Appeals2
Subject: FW: Submission Emt Health Service SU 05E SU0138
Attachments: Emt Health Submission SU05E SU0138 Quarry Gortletteragh Donegal.docx

From: Sulley, Andrew <andrew.sulley@hse.ie>
Sent: Monday, July 25, 2022 4:49 PM
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Cc: Hueston, Caroline <caroline.hueston@hse.ie>; MARIE RYAN <marie.ryan9@hse.ie>; Terri Mullee <terri.mullee@hse.ie>
Subject: Submission Emt Health Service SU 05E SU0138

Please find enclosed a submission from the Environmental Health Service for sub consent application SU 05E SU0138

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

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


Andrew Sulley
Senior Environmental Health Officer

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

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22nd 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 6th 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

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

The EHS notes the statement by ABP in the cover letter to Joe Bonner dated 30th 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 26th 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.

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 26th August 2021.

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

The submission dated 26th 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 26th 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 26th 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 26th 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 26th August 2021 and makes no additional comments.

Andrew Sulley



Andrew Sulley
Senior Environmental Health Officer

